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January 26, 2005

2005 JAN 26 PM 4:03  
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VIA HAND DELIVERY

Hon. Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Joint Petition for Arbitration of NewSouth Communications Corp., et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*  
Docket No. 04-00046

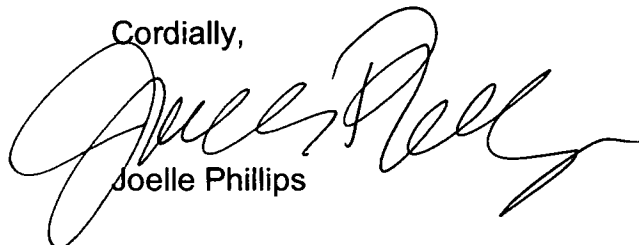
Dear Chairman Miller:

Enclosed are the original and fourteen copies of depositions (and errata sheets for those depositions) taken in the North Carolina docket corresponding to the referenced docket. Depositions are enclosed for the following BellSouth witnesses:

Kathy Blake  
Scot Ferguson  
Eric Fogle  
Carlos Morillo  
Eddie Owens

A copy of this letter is being provided to counsel of record.

Cordially,

  
Joelle Phillips

JJP:ch

**CERTIFICATE OF SERVICE**

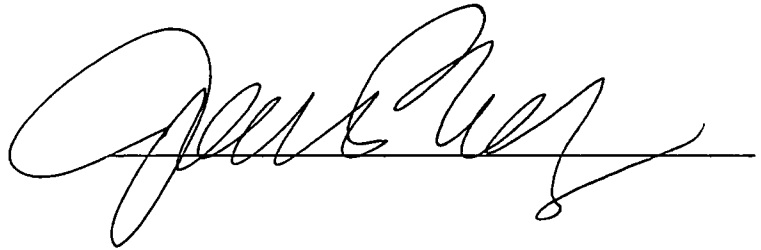
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A handwritten signature in dark ink, appearing to read "John J. Heitmann", is written over a horizontal line.

Page 1

Page 3

BEFORE THE  
NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-772, Sub. 8  
Docket No. P-913, Sub. 5  
Docket No. P-1080, Sub. 3  
Docket No. P-824, Sub. 6  
Docket No. P-1201, Sub. 4

In the Matter of )  
 )  
Joint Petition BellSouth )  
Communications Corp., et al. for )  
Arbitration with BellSouth )  
Telecommunications, Inc. )

Raleigh, North Carolina  
Tuesday, December 7, 2004  
Deposition of KATHY BLAKE,  
VOLUME II

a witness herein, called for  
examination by counsel for the Joint  
Petitioners, in the above-entitled action,  
pursuant to Notice, the witness being duly  
sworn by Nicole Ball Fleming, Court  
Reporter and Notary Public in and for the  
State of North Carolina, taken at the  
offices of Failer Fox Adams & Bernstein,  
150 Fayetteville Street Mall, Suite 1400,  
Raleigh, North Carolina, beginning at 2:30  
p.m., on Tuesday, December 7, 2004, such  
proceedings being taken stenographically  
by Nicole Ball Fleming

1 INDEX TO EXAMINATIONS & EXHIBITS

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1 APPEARANCES OF COUNSEL

2  
3 On behalf of the Joint Petitioners

4 Stephanie Joyce  
5 John J. Hertrmann  
6 Kelley Drive & Warren  
7 1200 19th Street NW  
8 Suite 500  
9 Washington, DC 20036

10 On behalf of BellSouth

11 Jim Meza  
12 Robert Culpepper  
13 BellSouth Legal Department  
14 675 West Peachtree Street NE  
15 Suite 4300  
16 Atlanta, GA 30375  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 STIPULATIONS

- 2 Prior to examination of the witness
- 3 counsel for the parties stipulated and
- 4 agreed as follows:
- 5 1. Said deposition shall be taken for
- 6 the purpose of discovery or for use as
- 7 evidence in the above-entitled action or
- 8 for both purposes as permitted by the
- 9 applicable rules of civil procedure.
- 10 2. Any objections to any part hereto as
- 11 to Notice of the taking of said deposition
- 12 or as to the time and place thereof or as
- 13 to the competency of the person before
- 14 whom the same shall be taken are hereby
- 15 waived.
- 16 3. Objections to questions and motions to
- 17 strike answers need not be made during the
- 18 taking of this deposition, but may be made
- 19 for the first time during the progress of
- 20 the trial of this case, or at any pretrial
- 21 hearing held before the judge for the
- 22 purpose of ruling thereon or at any other
- 23 hearing of said case at which said
- 24 deposition might be used, except that an
- 25 objection as to the form of a question
- must be made at the time such question is
- asked or objection is waived as to the
- form of the question.
4. That all formalities and requirements
- of the Statute with respect to any
- formalities not herein expressly waived
- are hereby waived, especially including
- the right to move for the rejection of
- this deposition before trial for any
- irregularities in the taking of the same
- either in whole or in part or for any
- other cause.
5. That the sealed original transcript
- of this deposition shall be mailed
- first-class postage or hand-delivered to
- the party taking the deposition or its
- attorney for preservation and delivery to
- the Court, if and when necessary.

1 (Pages 1 to 4)

NICOLE FLEMING & ASSOCIATES  
(919) 567-1123

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Page 7

1 KATHY BLAKE.  
2 having been duly sworn.  
3 testified as follows  
4 DIRECT EXAMINATION  
5 BY MS JOYCE  
6 Q Good afternoon. Ms Blake  
7 A Good afternoon  
8 Q We've met before. My name is Stephanie  
9 Joyce, and I represent the Joint  
10 Petitioners in this case. KMC Telecom  
11 Xspedius and NuVox. And if I refer to  
12 these entities as Petitioners, will you  
13 know who I'm referring to?  
14 A Yes  
15 (DEPOSITION EXHIBIT NO 1 WAS MARKED )  
16 Q I'm handing you an exhibit marked 1. Have  
17 you seen this document before?  
18 A Yeah. I may have seen it back a long time  
19 ago.  
20 Q You understand that you have been  
21 designated by BellSouth as a witness on  
22 issues for which you have submitted  
23 written testimony in this arbitration?  
24 A Yes  
25 Q And do you understand that you speak for

1 before he came on  
2 Q And let me just briefly go over the sort  
3 of game rules of the deposition so we're  
4 clear.  
5 You understand that the  
6 stenographer cannot register a nod of the  
7 head, and so I ask that you give an  
8 audible answer. Do you understand that?  
9 A Yes  
10 Q And I know that it can be hard, but if you  
11 could please refrain from using uh-huh and  
12 huh-uh, that would be helpful because it  
13 never registers well in a transcript. Can  
14 we agree to that?  
15 A Yes  
16 Q And just one other thing. If you could,  
17 take care to let me finish a question  
18 before you answer it, even if you think  
19 you know what the question is, that will  
20 help the stenographer keep everything  
21 straight and give us a clean record. Do  
22 you understand that?  
23 A Yes  
24 Q Thank you.  
25 And you understand that you are

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Page 8

1 the company on these issues and bind the  
2 company by your testimony?  
3 A Yes  
4 Q Have you ever been deposed before?  
5 A Yes, I have.  
6 Q And how many times?  
7 A Just one.  
8 Q What type of proceeding was that?  
9 A It was a Pay Phone proceeding in Florida.  
10 Q Was it before the Florida Commission?  
11 A I don't believe it was. I believe it was  
12 an antitrust claim against BellSouth by  
13 The Pay Phone Association.  
14 Q And have you been deposed any other time?  
15 MS JOYCE: Has somebody joined?  
16 MR VICKERY: Yes. This is Paul  
17 Vickery for the Public Service  
18 Commissions.  
19 MS JOYCE: Thank you. We're just  
20 getting underway.  
21 A I'm sorry, that last question?  
22 Q Oh, it wasn't a question. I was telling  
23 Mr. Vickery we were just getting under  
24 way.  
25 A No. I thought you asked me a question

1 under oath?  
2 A Yes, I do.  
3 Q And that the testimony you give today can  
4 be presented to any state commission in  
5 the BellSouth region in this arbitration  
6 as if you were present at that hearing.  
7 Do you understand that?  
8 A Yes, I do.  
9 (DEPOSITION EXHIBIT NO 2 WAS MARKED )  
10 Q Ms. Blake, I'm handing you a document  
11 that's been marked Exhibit 2. Do you  
12 recognize this document?  
13 A Yes, I do.  
14 Q And what is it?  
15 A It's my prefiled supplemental direct  
16 testimony filed in North Carolina.  
17 Q And did you write this testimony?  
18 A Yes. It was written by me under my  
19 direction.  
20 Q Were you assisted in the drafting of this  
21 testimony?  
22 A I have some personnel that work for me  
23 that assist me in the development of my  
24 testimony, yes.  
25 Q And what are the names of those persons?

2 (Pages 5 to 8)

Page 9	Page 11
<p>1 A Elizabeth McClurkin 2 Q Would you spell her last name? 3 A M-c-C-l-u-r-k-i-n And Mike Harper 4 Q Anybody else? 5 A No 6 Q And you've stated in your testimony that 7 you are -- 8 MS JOYCE Has somebody joined? 9 MR GRIER Yes This is Stan 10 Grier again 11 MS JOYCE Hello. Mr. Grier 12 Q You've stated in your testimony -- and I 13 can refer you to the exhibit I just showed 14 you on page 1 -- that you are the director 15 of policy implementation for the nine 16 state BellSouth region 17 What is the nature of your 18 position at BellSouth? 19 A The nature of my position in regards to 20 director of policy implementation is we 21 get involved in assessing commission 22 orders or implementing BellSouth policy as 23 it pertains to those commission orders or 24 directions that BellSouth plans to take 25 relative to the decisions or how we're</p>	<p>1 A John Racilly 2 Q What is his title? 3 A Senior director, regulatory and external 4 affairs 5 Q And do you report directly to Mr. Racilly? 6 A Yes 7 Q You mentioned persons interested in 8 interconnection-related issues may have 9 reviewed your testimony 10 To your knowledge, did Mr. Keith 11 Milner review your testimony? 12 A Yes he did 13 Q Did Mr. Jerry Latham? 14 A He may have I'm not sure all who it may 15 have been distributed to for their 16 review He could have reviewed it though 17 yes 18 Q Did you receive edits from Mr. Racilly? 19 A I don't believe I did no 20 Q Did you receive edits from Mr. Milner? 21 A He provided me some input to the 22 testimony, yes 23 Q Did anybody ask you to draft this November 24 12th testimony? 25 A Did anybody ask me to draft it? I mean, I</p>
Page 10	Page 12
<p>1 going to implement policy development 2 Q Do you belong to a particular department 3 at BellSouth? 4 A Yes, regulatory and external affairs 5 Q And Ms. McClurkin is employed within that 6 department? 7 A Yes She reports to me 8 Q And Mr. Harper same question? 9 A Same answer 10 Q Did anybody review the testimony before 11 you before it was filed with the 12 Commission in North Carolina? 13 A Yes 14 Q And can you tell me the persons who 15 reviewed it? 16 A I probably can't name all of them It was 17 reviewed interdepartmentally within 18 regulatory, my boss reviewed it, legal -- 19 I know legal counsel reviewed it, any 20 number of people that may have had an 21 interest in the issues that are addressed 22 in here, folks from interconnection 23 services as it pertains to the issues that 24 impact the agreement 25 Q Who is your boss?</p>	<p>1 was -- I was asked as part of my position 2 at BellSouth to be the policy witness 3 representing these issues I don't know 4 if there was a specific person that asked 5 me to draft it, but as far as my role as 6 the policy witness, it was assumed as my 7 role to do that 8 Q Do you recall when it was established that 9 you would be a witness in this 10 arbitration? 11 A Probably back in -- It was filed in 12 February Probably sometime in the March 13 time frame, February March when we 14 assessed the issues and determined what 15 witness -- what employee within BellSouth 16 would support each of the issues, the 17 hundred and something issues we started 18 with 19 Q And was that February or March of this 20 year? 21 A Yes ma'am 22 (DEPOSITION EXHIBIT NO 3 WAS MARKED ) 23 Q I'm handing you a document marked Exhibit 24 3 Do you recognize this document? 25 A Yes, I do</p>

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Page 15

1 Q Can you tell me what it is please?  
2 A It is my prefiled rebuttal testimony filed  
3 before the Tennessee Regulatory Authority  
4 in regards to this arbitration proceeding  
5 Q And did Elizabeth McClurkin assist you with  
6 this testimony?  
7 A Yes  
8 Q And did Mr Harper assist you with this  
9 testimony?  
10 A Yes  
11 Q In what way did they assist you?  
12 A I mean pretty much taking -- the content  
13 of this testimony is very similar to some  
14 of the content of my North Carolina  
15 testimony, and it's a matter of basically  
16 massaging it to make it comply with, you  
17 know the Tennessee Regulatory Authority  
18 changing commission to authority and going  
19 through those motions and reviewing the  
20 Joint Petitioners' testimony and making --  
21 to see if the same assertions that were we  
22 made in the North Carolina testimony were  
23 applicable and making any additional  
24 modifications we may need to specifically  
25 address the Joint Petitioners' direct

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1 testimony  
2 Q Did they work only with you on this  
3 project, this testimony?  
4 A Well, they were -- I mean, they report to  
5 me, and that is -- their role within  
6 BellSouth is to assist in the preparation  
7 of rebuttal testimony and research  
8 issues. Are they the only ones that work  
9 with me is that -- I'm not understanding  
10 your question  
11 Q No. Let me rephrase  
12 A Okay  
13 Q Do you know whether Ms McClurkin received  
14 assistance from someone other than  
15 yourself in helping you on this testimony?  
16 A Through investigating the issues that I'm  
17 addressing in my testimony, she may have  
18 gone to other people that have some other  
19 expertise in these areas probably some  
20 discussions with Mr Tamplin and Rona  
21 Reynolds in regards to the negotiations  
22 and the discussions between the parties  
23 Q And, to your knowledge did Mr Harper  
24 receive assistance from somebody other  
25 than yourself working on this testimony?

1 A The same answer relative to Ms McClurkin  
2 Q Ms Blake, what role, if any did you play  
3 in the negotiations that led to this  
4 arbitration?  
5 A In the negotiations that led to the  
6 arbitration that was filed in February, I  
7 had very limited, if -- probably -- if  
8 any, other than having discussions with  
9 Jim Tamplin or Rona as issues were getting  
10 teed up prior to the final I guess,  
11 release of the hundred-plus issues, you  
12 know kind of what those issues were and  
13 how we were going to -- how they were  
14 dwindling down, if you will down to a  
15 hundred from the base negotiations. But  
16 post-February or actually post the  
17 abatement period I was involved in the  
18 summits as we've had -- the three summits  
19 we've had during the abatement period  
20 Q For the record what is a summit in that  
21 context?  
22 A It was face-to-face negotiations that the  
23 parties agreed to have during the  
24 abatement -- the 90-day abatement  
25 period

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1 Q Do you recall how many summits there were?  
2 A There were three  
3 Q Did you attend all three?  
4 A Yes I did  
5 Q I'd like to discuss just quickly your  
6 background. Again you can look at  
7 Exhibit 2 page 1. It's your November  
8 12th testimony.  
9 A Uh-huh  
10 Q Line 21 references a company called  
11 Southern Bell. Is that a predecessor to  
12 BellSouth?  
13 A Yes and it shows my age yes. That was  
14 Southern Bell prior to BellSouth, one of  
15 the regional Bell operating companies --  
16 or Bell operating company before it became  
17 a regional Bell operating company.  
18 Q This is predivestiture?  
19 A Yes ma'am  
20 Q And was that only a Florida entity  
21 Southern Bell?  
22 A No, ma'am. It was four states Florida,  
23 Georgia, North Carolina, and South  
24 Carolina. It was represented -- or  
25 comprised Southern Bell.

4 (Pages 13 to 16)

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1 Q All right And your testimony goes on to  
2 say at lines 22 to 23 that, in '82, you  
3 became involved in staff support Do you  
4 see that?  
5 A Yes  
6 Q What does that mean "staff support"?  
7 A One of my primary responsibilities was  
8 developing methods and procedures for  
9 retail operation centers the line  
10 organization developing methods and  
11 procedures for them to do their job  
12 Q What would these methods and procedures  
13 assist them in doing?  
14 A It was predominantly in the consumer  
15 services organization that dealt with  
16 handling the phone calls from our end-user  
17 customers, answering the phone placing  
18 service orders handle -- collect bills  
19 those different methods and procedures  
20 that the representative would use to do  
21 their job  
22 Q Would it assist them in selling services  
23 to end users?  
24 A It could be I mean, back at that time --  
25 again, it's predivestiture -- it was our

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1 you know basic local exchange service and  
2 providing basic telephone service and  
3 retail operations  
4 Q Would you -- Would these methods and  
5 procedures assist these personnel in  
6 handling complaints from an end user?  
7 A It could I mean they would have to  
8 recognize that a customer was unhappy and  
9 whether to defer that to their supervisor  
10 or you know, how to handle a customer  
11 that had a problem  
12 Q All right And at lines 23 to 24, you  
13 list what appear to be four functions?  
14 A Uh-huh  
15 Q Did you perform all these functions at the  
16 same time?  
17 A No That was performed between the years  
18 of 1982 through 1997  
19 Q I see So is it true that you started in  
20 staff support in '82 -- actually if you  
21 can tell me the progression --  
22 A Sure, that's fine  
23 Q -- I think this would go much easier  
24 A I started with the telephone company,  
25 which at that time was Southern Bell, in

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1 Miami as a business office supervisor  
2 And stayed down there less than a year and  
3 then moved up to Atlanta as a staff  
4 position writing the procedures that I  
5 talked about methods and procedures And  
6 then subsequent to that moved into  
7 different aspects of the corporation as we  
8 evolved and became BellSouth Services and  
9 as the whole -- through divestiture and  
10 went into product management some  
11 negotiations as we did some of the billing  
12 and collection agreements back in the day,  
13 and then into market management with  
14 interconnection services  
15 Q When did you move into the product  
16 management role?  
17 A That was probably in -- I want to say in  
18 '95 '96 time frame '95, probably  
19 Q And what did you do in that role?  
20 A I supported -- the independent pay phone  
21 market was one of mine, and then I moved  
22 into independent pay phone provider  
23 markets I also did some other product  
24 management related to some of our AIN  
25 services, like call in database and

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1 originating line screening those types of  
2 wholesale services  
3 Q And by "AIN", do you mean advanced  
4 intelligent networks?  
5 A Correct Very good  
6 Q And then subsequent to that did you start  
7 in the negotiations role?  
8 A Yes That was somewhat involved in some  
9 of the AT&T negotiations back with Billing  
10 and collection Services, the billing and  
11 collection agreements we have with  
12 interexchange carriers to do their billing  
13 on their behalf  
14 Q So these were interexchange services  
15 arrangement?  
16 A Yes for billing and collection, putting  
17 their messages on our bill  
18 Q Did you personally conduct negotiations?  
19 A Yes along with a lot of other people I  
20 mean, I was involved in the negotiations  
21 of the actual agreement for how we would  
22 handle -- from the operations standpoint  
23 of how our centers would respond to their  
24 customers' you know, collection  
25 complaints or billing disputes, those type

5 (Pages 17 to 20)

Page 21

1 of things We would work those procedures  
2 out for the business office to handle  
3 those on behalf of AT&T or whoever the  
4 agreement was with  
5 Q And at what time did you do that work?  
6 A It -- It was all kind of involved in that  
7 '95, '96, early '97 time frame  
8 Q And what did you do in market management?  
9 A That was in concert with the independent  
10 pay phone provider market  
11 Q Did you cease working in market management  
12 in '97 when you moved to state  
13 regulatory?  
14 A Yes  
15 Q And at page 2 of your November 12th  
16 testimony --  
17 A Uh-huh  
18 Q -- lines 2 to 3, you state that you  
19 assumed your current responsibility in  
20 July 2003. What are those current  
21 responsibilities?  
22 A Representing BellSouth as a policy witness  
23 in various proceedings before state  
24 commissions, such as arbitration  
25 proceedings or generic dockets

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1 Q So is it fair to say that you began  
2 working with the 1996 Act implementation  
3 in 1997?  
4 A Yes through the 271 applications and  
5 Q If you could please turn to page 4 of your  
6 November 12th testimony. At lines 10 to  
7 11 --  
8 A Uh-huh  
9 Q -- you state that because I'm not an  
10 attorney I am not offering a legal  
11 opinion on these issues. Do you see that?  
12 A Yes  
13 Q And what do you mean by that?  
14 A That I'm not an attorney and I'm not  
15 offering a legal opinion. I'm providing  
16 BellSouth's policy perspective, my  
17 understanding of -- or my interpretation  
18 of the rules and orders that impact our  
19 decisions and policy that we implement  
20 Q Can you tell me what the difference is  
21 between a policy perspective and a legal  
22 opinion?  
23 A I would say a legal opinion is one that  
24 would have a -- you have a legal degree  
25 or a legal foundation for making. A

Page 23

1 policy is -- is how we would interpret  
2 what that rule or law or -- not the law.  
3 but the rule -- the orders require us to  
4 do how we would implement that -- those  
5 decisions  
6 I mean, a legal interpretation  
7 would be based on, I guess, all sorts of  
8 foundation of the law  
9 Q Just now you used the phrase how we  
10 interpret. Is BellSouth the "we" in that  
11 statement?  
12 A Yes. I represent BellSouth, and how  
13 BellSouth would implement the -- its --  
14 the rules or orders and what its  
15 obligations are to comply with those rules  
16 and orders  
17 Q You stated you're not an attorney. Do you  
18 have any legal training?  
19 A No, I do not  
20 Q Do you know how to conduct legal research?  
21 A No, I do not  
22 Q If you could, I'm going to say a  
23 statement and I want you to tell me if  
24 it's a policy perspective or a legal  
25 opinion. Stephanie Joyce is complying

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1 with federal law  
2 A I would say that would have to be a legal  
3 opinion  
4 Q Is it your position that this testimony  
5 that was filed November 12th does not  
6 contain legal opinions?  
7 MR. MEZA: Object to form. You  
8 can answer.  
9 THE WITNESS: Okay.  
10 A Can you ask that again?  
11 Q Is it your position that your November  
12 12th testimony does not contain legal  
13 opinions?  
14 A It's not my legal opinion. I mean, I  
15 wasn't putting forth a legal opinion. I  
16 was putting forth BellSouth's policy and  
17 our understanding of the requirements  
18 associated with the different orders and  
19 rules that are impacting this arbitration.  
20 Q Does this testimony reflect somebody's  
21 legal opinion?  
22 A I mean, again, I'm not an attorney. The  
23 testimony speaks for itself. I mean, I  
24 did state in here that any legal opinion  
25 or position would be briefed, you know

6 (Pages 21 to 24)



Page 25

1 during the briefing process Again, I  
2 just put forth our understanding on how it  
3 will impact the language that we have to  
4 put in the contract and the issues  
5 surrounding that are involved in this  
6 arbitration  
7 Q How would you -- Ms Blake how would you  
8 like the North Carolina Commission to  
9 construe this November 12th testimony?  
10 MR MEZA Object to the form  
11 A It's putting forth BellSouth's position as  
12 it pertains to the issues that are set  
13 forth in my testimony And if there's  
14 anything that requires a legal conclusion  
15 or a legal argument, that will be  
16 addressed in our briefs filed after the  
17 hearing  
18 Q So this testimony should be construed as  
19 BellSouth's policy position?  
20 A Yes That's what I'm representing as  
21 BellSouth's policy witness  
22 Q Let's turn to the specific issues We'll  
23 start with what we're calling the  
24 supplemental issues  
25 A Okay

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1 Q At page 7 of your November 12th testimony,  
2 at line 16 you use the phrase, the FCC  
3 clearly intended Do you see that?  
4 A Uh-huh  
5 Q How did --  
6 A Yes  
7 Q How did you reach that conclusion?  
8 A I reached that conclusion based on reading  
9 the Interim Rules Order, which the FCC  
10 issued and clearly indicated that they  
11 thought a transition period should take  
12 effect without delay, as I state there  
13 Q Did you speak with any of the FCC  
14 commissioners before reaching this  
15 conclusion?  
16 A No, I did not  
17 Q Did you speak with any FCC staff before  
18 reaching this conclusion?  
19 A No, I did not  
20 Q Did you review any documents in reaching  
21 this conclusion?  
22 A I reviewed the Interim Rules Order  
23 Q Any other documents?  
24 A Well, the USTA II vacatur decision, pretty  
25 much the Interim Rules Order addresses

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1 this aspect of what I'm talking about here  
2 in my testimony  
3 Q And by "USTA II" are you referring to the  
4 case that's captioned United States  
5 Telecom Association versus FCC that was  
6 released by the DC Circuit in March of  
7 this year?  
8 A Yes March 2nd Thank you  
9 Q So for short we call that U-S-T-A Roman  
10 numeral II, USTA II  
11 At page 8 of this November 12th  
12 testimony, lines 24 to 25 you state here  
13 that the Interim Rules Order makes it  
14 clear that the FCC intended for this to be  
15 an incorporation of its final unbundling  
16 rules Do you see that?  
17 A Yes I do  
18 Q Was this conclusion also reached per your  
19 read of the Interim Rules order?  
20 A Yes I think the Interim Rules Order is  
21 very clear of the FCC's -- in my opinion,  
22 their intention for a speedy  
23 incorporation The final rules are not to  
24 be delayed by protracted negotiation  
25 Q Is it based on your read of any other

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1 document?  
2 A Again, the same -- same basis as before  
3 the Interim Rules Order is self-contained  
4 (DEPOSITION EXHIBIT NO 4 WAS MARKED )  
5 Q Ms Blake, I'm handing you a document --  
6 A Uh-huh  
7 Q -- that's marked Exhibit 4  
8 A Uh-huh  
9 Q Is this the Interim Rules Order to which  
10 you refer?  
11 A Yes  
12 (DEPOSITION EXHIBIT NO 5 WAS MARKED )  
13 Q I'm also handing you a document labeled  
14 Exhibit 5 Is this the USTA II decision  
15 to which you have referred?  
16 A It's a different format of the one I  
17 looked at It was not I guess from  
18 Westlaw or this particular source, but it  
19 appears to be the same content, just  
20 different structure  
21 Q Do you have any reason to think that this  
22 document does not reflect the decision of  
23 the DC circuit in that case?  
24 A No I'm sure it is  
25 Q And moving again to your November 12th

7 (Pages 25 to 28)

Page 29	Page 31
<p>1 testimony. Ms. Blake at page 9, at the 2 top of the page 3 A Uh-huh 4 Q You state that failure to automatically 5 incorporate the FCC's final unbundling 6 rules into CLP agreements can result in 7 discrimination 8 In what way would a failure to 9 incorporate the rules result in 10 discrimination? 11 A This statement is in the context of those 12 CLECs that may have -- CLPs that may have 13 already modified their agreement to comply 14 with the USTA II vacatur decision as well 15 as the TRO 16 So -- And the fact -- which in 17 turn, based on their presumption that 18 certain elements would not be required to 19 be unbundled, may have already effectuated 20 those into their agreement, which is in 21 essence, what we believe the final rules 22 will do as well 23 Q All right So the sentence that is 24 recorded here at lines -- 25 A Uh-huh</p>	<p>1 incorporated which rules into their 2 agreements? 3 A There are some TRO compliant agreements 4 is my understanding I'm not real sure on 5 the Interim Rules Order if there's been 6 any that have gone down that path yet but 7 I'm certain there are some TRO compliant 8 agreements out there But the Joint 9 Petitioners' agreement is not even TRO 10 compliant at this juncture so, again, 11 there's a difference in what the current 12 law is between those two agreements right 13 there 14 Q And it's your position as a non-attorney 15 that the Joint Petitioners' present 16 agreements are not TRO compliant is that 17 right? 18 A That's my understanding, yes 19 Q Do you know how many carriers have changed 20 their agreements to be compliant with the 21 TRO? 22 A No I don't 23 Q Do you know if those agreements apply 24 region wide, or are they specific to one 25 state?</p>
Page 30	Page 32
<p>1 Q -- 2 to 5 -- 2 A Uh-huh 3 Q -- that discusses discriminating against 4 facilities-based carriers that have 5 already made their agreement compliant 6 with the current law 7 So is it your testimony that if 8 there is a competitive carrier whose 9 agreement complies with current law, they 10 will be discriminated against if what 11 happens? 12 A Well, when the final unbundling rules come 13 out, it will set forth what we're required 14 to unbundle and what we're not Based on 15 the Interim Rules Order or -- and the 16 vacatur I mean I think it's very clear 17 -- or pretty clear what will be required 18 with the final unbundling rules as far as 19 switching and -- you know to that 20 extent So our position is a lot of 21 carriers have -- CLECs have already 22 incorporated the current law into their 23 agreement The Joint Petitioners have 24 not 25 Q There are carriers that have already</p>	<p>1 A I don't know 2 Q Do you know who the carriers are that have 3 agreements that are TRO compliant? 4 A No, I don't 5 Q Further down the page on page 9, lines 5 6 to 8, you state that it also 7 discriminates -- and I think you're 8 referring to failure to automatically 9 incorporate the rules by "it" -- 10 discriminates against those carriers that 11 have negotiated commercial agreements with 12 BellSouth based upon the presumption that 13 all carriers will be subject to the FCC's 14 final unbundling rules without unnecessary 15 delay Do you see that? 16 A Yes 17 Q Which carriers to date have negotiated 18 agreements upon this presumption? 19 A I can't speak specifically for each 20 agreement, but we do have commercial 21 agreements that were based on the 22 presumption that unbundling relief will be 23 forthcoming, so they have entered into 24 commercial agreements At one point, it 25 was 15 I don't know the exact number</p>

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1 now I mean, we have put out press  
2 releases in that regard. so it's public  
3 information. but I don't know the exact  
4 carriers or context of their agreements  
5 Q And how is that presumption memorialized  
6 in these agreements?  
7 A The presumption that we're no longer  
8 required to do unbundling? I'm sorry  
9 Q The presumption that all carriers will be  
10 subject to the FCC's final unbundling  
11 rules without unnecessary delay how does  
12 that presumption appear in these  
13 agreements?  
14 A Well I mean it's BellSouth's presumption  
15 that we will be relieved of unbundling  
16 requirements and those CLECs that have  
17 entered into commercial agreements agree  
18 with that presumption and, therefore, have  
19 entered into a commercial agreement to  
20 continue to avail themselves of those  
21 comparable services at a commercial rate,  
22 under a commercial agreement  
23 Q How do you know that they agree to that  
24 premise?  
25 A Because I've -- I mean I know what's

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1 involved in our commercial agreement or  
2 what we're offering through our commercial  
3 agreement, and it will be typically things  
4 that we were previously required to offer  
5 as a UNE pursuant to TELRIC pricing. But  
6 based on the presumption that we will not  
7 be required unbundle those elements or  
8 provide those elements at TELRIC pricing  
9 -- T-E-L-R-I-C. sorry -- TELRIC pricing.  
10 the CLECs have entered into these  
11 commercial agreements to continue to  
12 obtain those services at a market-based  
13 rate  
14 Q Does it state in any of these ICAs that  
15 undersigned CLEC understands that all  
16 carriers will be subject to the FCC's  
17 final unbundling rules without unnecessary  
18 delay?  
19 A Well as initial matter they're not  
20 interconnection agreements they're  
21 commercial agreements. And whatever's in  
22 the commercial agreement speaks for  
23 itself I mean it lays out whatever  
24 terms and conditions the parties agree to  
25 under that agreement

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1 Q Is the existence of the agreement the  
2 basis on which you say that the CLECs  
3 acted on this presumption?  
4 A Yes I mean they made the presumption  
5 that they're not going to be able to  
6 obtain these elements or these services as  
7 UNEs at TELRIC rates. therefore they took  
8 the step to lock in or enter into an  
9 agreement to continue to receive these  
10 services under a commercial agreement  
11 Q Has any CLEC told you, Ms. Blake, we're  
12 doing this agreement so that we can lock  
13 in our rates because we know about the  
14 unbundling rules that are going to change?  
15 A Nobody's told me that personally, no  
16 Q You stated that they are commercial  
17 agreements and you're -- why is that  
18 something different than an  
19 interconnection agreement?  
20 A An interconnection agreement is not a  
21 commercial agreement. We don't have a  
22 choice whether to enter into an  
23 interconnection agreement. We're  
24 obligated pursuant to federal rules and  
25 requirements and the Act to enter into

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1 negotiations and provide interconnection  
2 and unbundling pursuant to 251 of the Act  
3 Q Are these commercial agreements governed  
4 by any FCC rules?  
5 MR MEZA Object to the form  
6 You can answer  
7 A I don't know specifically that they're  
8 governed by the FCC rules other than --  
9 or my understanding is they've got to be  
10 compliant with 201 202 of the Act as far  
11 as being just and reasonable and  
12 nondiscriminatory. But as far as a 251  
13 obligation, no they're not required to be  
14 -- or they're not bound by the 251  
15 requirements  
16 Q Are they publicly filed with any  
17 commission?  
18 A Not to my knowledge  
19 Q Are they available for viewing by any  
20 other CLEC?  
21 A We have made it -- I believe we did a  
22 customer notification letter that  
23 indicated they could come view them at our  
24 offices in Atlanta  
25 Q And to whom did that letter go?

9 (Pages 33 to 36)

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1 A I think it was posted on our website  
2 Q Do you know the date of that letter?  
3 A No I don't  
4 Q Was Atlanta the only choice of venue for  
5 viewing the agreement?  
6 A To the best of my knowledge I'm not sure  
7 if there were any other sites or locations  
8 worked out or arranged  
9 Q Why -- Did BellSouth post the agreement on  
10 the website?  
11 A No It's BellSouth's position that those  
12 agreements are commercial agreements and  
13 are not subject to posting or filing with  
14 the Commission  
15 Q Do you know whether any CLEC has actually  
16 gone to Atlanta to view these agreements?  
17 A No, I don't know  
18 Q Do you know whether any commission has  
19 ordered BellSouth to publicly file these  
20 commercial agreements?  
21 A I'm not certain There's been some  
22 activity in Georgia, but I'm not sure of  
23 the latest outcome of that  
24 Q Is Georgia one of the states within your  
25 purview as director of policy

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1 implementation?  
2 A Yes I handle the nine states, yes  
3 MS JOYCE Mr Meza, this is  
4 something that hasn't come up before  
5 MR MEZA Okay  
6 MS JOYCE I --  
7 MR MEZA Do you want it on the  
8 record or off?  
9 MS JOYCE On the record  
10 MR MEZA Okay  
11 MS JOYCE We may need to talk  
12 about it later, but would it be possible  
13 for me to lodge a deposition request to  
14 see the carrier notification letter or a  
15 link to it?  
16 MR MEZA I need to think about  
17 that  
18 MS JOYCE That's fair  
19 MR MEZA I'll let you know  
20 MS JOYCE That's fair  
21 Q If you could, turn please to page 10 of  
22 your November 12th testimony At lines 7  
23 to 9, you state that there will be  
24 portions of the final FCC unbundling rules  
25 that even the Joint Petitioners cannot

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1 disagree with Do you see that?  
2 A Yes  
3 Q On what do you base this statement?  
4 A I believe we've reached agreement  
5 regarding the definition of switching,  
6 mass market switching  
7 Q Is there any other portion of the  
8 forthcoming order that you believe the  
9 Joint Petitioners will not be able to  
10 disagree with?  
11 A I think as far as what rates we're  
12 obligated to charge for the elements that  
13 remain unbundled it's likely that we  
14 wouldn't have a disagreement on that  
15 Q UNE rates in other words --  
16 A UNE rates  
17 Q -- would not be --  
18 A Right  
19 Q Is there any other thing you can think of  
20 that would not be subject to disagreement?  
21 A I mean, I would anticipate the final rules  
22 would be clear on what has to be  
23 unbundled, what remains to be unbundled  
24 Q Do you think that there are any portions  
25 of the Interim Rules Order, Exhibit 4 --

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1 A Uh-huh  
2 Q -- that could be deemed ambiguous?  
3 A Of the Interim Rules Order? I mean I  
4 think there's some disagreements between  
5 the parties as it pertains to the issues  
6 that are tied up in this arbitration, so I  
7 guess the answer to that would be,  
8 obviously by the identification of some  
9 of these supplemental issues, there's some  
10 disagreement over what the Interim Rules  
11 require  
12 This context of my testimony is  
13 talking about once the final rules come  
14 out there will be -- there could  
15 possibly be some good-faith disagreements  
16 as to what the final rules require but  
17 you know, it's our intent that should that  
18 be the case and that should be a limited  
19 set of issues then you know, we'll see  
20 it appropriate to go through dispute  
21 resolution to resolve those limited number  
22 of issues that can't be agreed upon in  
23 good-faith negotiations  
24 Q In the event that there's a good-faith  
25 dispute about what the final unbundling

10 (Pages 37 to 40)

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1 rules mean is it your position that state  
2 commission involvement may be necessary to  
3 resolve the dispute?

4 A Yes and that matches the language we  
5 propose as far as dispute resolution  
6 could, you know, proceed during that --  
7 down that path with that limited set of  
8 issues that could not be resolved

9 Q Do you think that such a commission  
10 proceeding would frustrate the FCC's  
11 intent to get the final rules  
12 implemented?

13 A I think it would if the -- it would --  
14 the FCC's intent to not delay implementing  
15 the final rules would be frustrated if we  
16 just did that for everything and did not  
17 go ahead and implement those things that  
18 are clear and there's not a dispute over  
19 what the rules require, then that would  
20 frustrate, in my opinion, their position  
21 in the Interim Rules Order to not delay  
22 implementing the final rules

23 Q What do you think should happen with  
24 respect to the parts of the final  
25 unbundling rules upon which the parties

1 vacatur of the Interim Rules Order the  
2 mandamus is granted, a petition to vacate  
3 the Interim Rules Order If that came  
4 into play --- again that's another issue  
5 within this proceeding that we addressed  
6 whether an intervening order would cause  
7 us to not have to provide or vacate the  
8 existing requirements that are in the  
9 Interim Rules Order and we would extend  
10 that same transition period, 30-day  
11 window

12 Q With respect specifically to a UNE or a  
13 network element, assuming the parties  
14 agreed on what the final unbundling rules  
15 meant with respect to that element would  
16 the 30-day -- is it possible the 30-day  
17 period would also be appropriate?

18 A Can you say that, again? I'm not sure I  
19 followed you

20 Q With respect to a rule regarding a UNE or  
21 a network element, if we assume the  
22 parties can agree on what the final  
23 unbundling rules mean with respect to that  
24 UNE or network element is it possible  
25 that a 30-day period of implementation

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Page 44

1 agree?

2 A They should be incorporated immediately  
3 into the agreement

4 Q Should there be any grace period of  
5 implementation in that event?

6 A Well, as far as those elements that we're  
7 not required to unbundle, BellSouth's  
8 addressed that in another issue in this  
9 proceeding Issue 23 that talks about a  
10 transition

11 So if some of the elements that  
12 we're previously providing in your  
13 agreement or under the current provisions  
14 of your old agreement go away and we're no  
15 longer obligated to provide them as an  
16 unbundled network element, then a  
17 transition process that we proposed you  
18 know, 30 days to identify those circuits  
19 and process the orders -- or issue the  
20 orders to transition them to a comparable  
21 service would be appropriate

22 Q Are there any other contexts in which that  
23 kind of 30-day period would be  
24 appropriate?

25 A It would be appropriate if there's a

1 would also be appropriate?

2 A Yes I mean, I think that's been put  
3 forth as our position You could have an  
4 intervening order, you could have a  
5 vacatur, or you could have final rules I  
6 mean

7 Q What does the word "vacatur" mean to you?

8 A I know what it means How do I say it?  
9 It means do away with or -- I don't know  
10 not -- no longer apply or it's not in  
11 effect It's vacated That's pretty much  
12 it

13 Q How did you derive that understanding of  
14 what the word means?

15 A Just from reading the -- the DC circuit  
16 court's decision where it says it vacated  
17 what the TRO said that we had to do, so it  
18 means we're no longer required to do what  
19 the TRO said to do in some circumstances  
20 -- some aspects of the TRO that were  
21 vacated

22 Q Are you referring specifically to the USTA  
23 II decision in your response just now?

24 A Yeah I mean that's an example of how  
25 the term vacated or vacatur would be used

11 (Pages 41 to 44)

Page 45

1 as it relates to the TRO and what the USTA  
2 II vacated as a result of what the FCC  
3 decided in the TRO  
4 Q And what does the word "remand" mean to  
5 you?  
6 A Remand to me means send back and do it  
7 again or do over or you didn't do it right  
8 the first time, so try again or reconsider  
9 other aspects and reassess what you  
10 decide  
11 Q And when that happens, a do over, as you  
12 say, what is the legal status of the  
13 item --  
14 MR MEZA Object to form  
15 Q -- that has been subject to remand?  
16 A I'm not sure I can speak to the legal  
17 status since I'm not an attorney but as  
18 far as if the TRO vacated or remanded  
19 something -- if they remanded something to  
20 the FCC and didn't vacate it, like  
21 entrance facilities, then the FCC, in  
22 whatever their final rules are, they would  
23 take guidance from what the USTA II  
24 decision said that in regards to what was  
25 remanded to it, to consider additional

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1 criteria or facts or considerations in  
2 their redoing of whatever they were  
3 remanded to do  
4 Q In your understanding is there a  
5 difference between a vacatur and a remand?  
6 A Yes  
7 Q What is the difference?  
8 A Vacatur means it doesn't exist anymore  
9 The requirement that was previously  
10 ordered that has now been vacated doesn't  
11 exist The remand means something could  
12 be remanded and vacated, vacated and  
13 remanded, I guess Things that are  
14 remanded and not vacated they would still  
15 be in effect but they would be sent back  
16 to -- for further consideration  
17 Q If I could refer you please to Exhibit  
18 3, which is your November 19th testimony  
19 It's the skinnier one page 4 You refer  
20 in line 14 to unambiguous provisions And  
21 this is with regard to the forthcoming  
22 final FCC unbundling rules  
23 A Uh-huh  
24 Q Do you see that?  
25 A Uh-huh

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1 Q What is an unambiguous provision in your  
2 mind?  
3 A It means that it's clear I mean, I think  
4 it's clearly understood by people that are  
5 reading the order to know what the  
6 requirement is of the order It's --  
7 Unambiguous is basically it's clear it's  
8 not confusing and there's not a dispute  
9 over what it means  
10 Q Can reasonable persons differ on what a  
11 provision means?  
12 A That's possible, but, again, our position  
13 on this has been, you know there will be  
14 limited issues that the parties through  
15 good faith might have good-faith  
16 disagreement over what it means For  
17 those that there is an agreement, those  
18 are the ones that should be automatically  
19 incorporated into the agreement on  
20 issuance of the final rules  
21 Q Do you know what's going to be in the  
22 final unbundling rules?  
23 A No, I do not  
24 Q You mentioned before that when this  
25 arbitration was filed in February, there

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1 was a hundred-and-something issues --  
2 A Seven  
3 Q -- involved It was a hundred and seven  
4 A Uh-huh  
5 Q Were you surprised that there are that  
6 many?  
7 MR MEZA Object to the form  
8 A Not particularly  
9 Q Why not? I'm entitled to your best  
10 knowledge so --  
11 MR MEZA Do you want to know the  
12 real answer?  
13 MS JOYCE I want to know her  
14 opinion  
15 MR MEZA Okay  
16 A I mean you've got five CLECs involved in  
17 arbitration -- or four three two  
18 whatever you know There's a lot of, you  
19 know issues that -- I guess that they  
20 couldn't agree on I mean -- I don't  
21 know I mean, it's a long protracted  
22 case There's a lot of activity  
23 surrounding this whole arbitration and  
24 negotiations I mean, again, I wasn't  
25 involved in the day-to-day negotiations

12 (Pages 45 to 48)

Page 49		Page 51	
1	but I mean it's a large agreement, a lot	1	set forth mass market switching
2	of attachments	2	enterprise loops, and dedicated transport
3	Q Do you believe that federal unbundling law	3	as those terms were defined in the TRO
4	was unambiguous at the time the	4	that were put forth before USTA II for
5	arbitration was filed?	5	them to -- for which they vacated
6	A I don't know that I can say it was or	6	And the Interim Rules Order
7	wasn't You know a lot of these issues	7	identified those rates and terms and
8	that are in this arbitration aren't really	8	conditions associated with those
9	limited to just the unbundling	9	TRO-defined vacated elements as frozen as
10	requirements There's a lot of ancillary	10	of the June 15th -- whatever is in the
11	issues that have nothing to do with our	11	June 15th agreement
12	obligation to unbundle something, that are	12	Q Can you show me where in the Interim Rules
13	not really related to what the federal	13	Order the word frozen appears?
14	unbundling requirements were specifically	14	A I'll have to look through it May or may
15	Q And in your understanding, having	15	not be in here Maybe it's our
16	participated in negotiations in this case,	16	interpretation of the term required, to
17	are -- the sections that are unrelated to	17	continue to -- continue providing --
18	unbundling rules are they governed by any	18	require ILECs to continue providing in
19	other body of law?	19	paragraph one
20	A I mean, I believe a lot of the general	20	Q In your testimony on this issue --
21	terms and conditions issues are just	21	A Uh-huh
22	general contract-type discussions, you	22	Q -- on page 11 of your November 12th
23	know, liability and that aspect that	23	testimony, at line 13 -- it's page 11
24	aren't directly associated to our	24	A Okay
25	unbundling requirements Some of the, you	25	MR MEZA What exhibit?
Page 50		Page 52	
1	know, other sections about deposits and	1	MS JOYCE November 12th, which
2	stuff are kind of byproducts of how you	2	would be 3
3	contain an interconnection agreement or an	3	THE WITNESS 2
4	agreement to provide services to another	4	MS JOYCE 2
5	party, but they're not specifically --	5	MR MEZA 2
6	they're not bundling obligations	6	MS JOYCE Sorry
7	(INTERRUPTION)	7	A Page 11 okay
8	MS JOYCE That was Mr. Meza's	8	Q At line 13 you say, at paragraph 29 of the
9	phone not mine	9	Interim Rules Order
10	MR MEZA I'm sorry	10	A Uh-huh
11	Q The provisions to which you refer are	11	Q So can you refer me to where in paragraph
12	those governed by any body of case law	12	29 it lists rates, terms, and conditions
13	other than unbundling law?	13	that are frozen?
14	A I don't know, I mean, other than -- I	14	A Well I'm not, in essence quoting the
15	don't know I'm not a lawyer don't know	15	word frozen in my cite to paragraph 29
16	Q Moving on to Issue S-2	16	It's in the gist of the fact that we would
17	A Uh-huh	17	have to continue to provide to requesting
18	Q Can you tell me what a frozen rate term	18	carriers what we provided them in their
19	and condition is?	19	June 15th agreement relative to the
20	A The Interim Rules Order put forth the	20	vacated element
21	terms -- the requirements of how	21	Q So when you say "frozen", you mean
22	BellSouth is to provide certain elements	22	something that is in an interconnection
23	that were vacated -- certain TRO	23	agreement that was effective on June 15th
24	requirements that were vacated by the USTA	24	is that correct?
25	II And in the Interim Rules Order it	25	A As it pertains to the elements that the

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1 USTA II vacated  
2 Q Which elements did USTA II vacate?  
3 A Mass market switching, enterprise loops,  
4 and dedicated transport as defined by the  
5 TRO  
6 Q It may seem like I'm prodding, but the  
7 word frozen is prevalent in your  
8 testimony --  
9 A Uh-huh  
10 Q -- and I feel that if we don't have this  
11 foundation, I'm going to be lost, so --  
12 A I think it is -- in the context of Issue  
13 112 it's in -- the issue statement  
14 contains the word frozen, so I think it  
15 was agreed upon by the parties that frozen  
16 was an acceptable term to indicate those  
17 items that were in effect in agreements in  
18 June 15th I mean --  
19 Q Okay  
20 A Okay  
21 Q I don't mean to say these are  
22 unacceptable  
23 A Okay  
24 Q It's just if I don't know what you  
25 mean --

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1 A Okay  
2 Q -- this will be a disaster  
3 A Sure  
4 Q So on page 21 of your November 12th  
5 testimony -- and this is with regard to  
6 Issue S-5  
7 A Uh-huh  
8 Q I just want to make sure that I have --  
9 A Sure  
10 Q -- I understand exactly what this means  
11 Lines 7 to 18  
12 A Uh-huh  
13 Q Do you see that paragraph?  
14 A Right  
15 Q It says mass market switching, enterprise  
16 market loops, and high-capacity dedicated  
17 transport  
18 A Uh-huh  
19 Q And then down on 12 to 13 -- lines 12 to  
20 13, it says, referred to as the frozen  
21 rates, terms, and conditions. Do you see  
22 that?  
23 A Yes  
24 Q So there are three frozen rates, terms,  
25 and conditions?

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1 A Correct, as they were vacated by USTA II,  
2 which they were defined by the TRO  
3 Q And when you refer to mass market  
4 switching, enterprise market loops, and  
5 high-capacity dedicated transport --  
6 A Uh-huh  
7 Q -- you've used the phrase, as they're  
8 defined by the TRO?  
9 A Uh-huh  
10 Q What do you mean by that?  
11 A Well, the TRO set forth specific  
12 definitions of enterprise loops at  
13 paragraph 249, which is cited on my  
14 testimony, and the TRO specifically  
15 excluded OCN level loops from being  
16 required to be unbundled.  
17 If the definition in the agreement  
18 contained OC -- an obligation to provide  
19 OCN level loops, that's not TRO  
20 compliant. And USTA II only vacated the  
21 TRO's definition relative to these  
22 elements.  
23 So the Interim Rules Order only  
24 applies to the vacated elements as they  
25 were defined by the TRO, which in this

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1 example or case with enterprise loops, OCN  
2 level loops are not required to be  
3 unbundled, even if they're in your current  
4 agreement as of June 15th based on the  
5 Interim Rules Order and what was vacated.  
6 Q And you've testified that the vacated  
7 elements were mass market switching,  
8 enterprise market loops, and dedicated  
9 transport, all as defined in the TRO. Do  
10 I have that correct?  
11 A Yeah, the elements that were put before  
12 USTA II were the TRO-defined elements for  
13 mass market switching, enterprise, and  
14 dedicated transport. So when they  
15 vacated, they vacated that definition that  
16 was put before it. So things that were  
17 removed from that definition like entrance  
18 facilities, the TRO said those are not  
19 part of dedicated transport. So when USTA  
20 II with the DC circuit looked at dedicated  
21 transport, it didn't go back and give you  
22 entrance facilities. Entrance facilities  
23 were already out of the definition that it  
24 considered to vacate. And then the  
25 Interim Rules Order just put back for this

14 (Pages 53 to 56)



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1 interim and transition period those  
2 vacated elements for this 12-phase  
3 transition  
4 Q So if an element is vacated but it's in  
5 somebody's interconnection agreement as of  
6 June 15th of this year, that's a frozen  
7 rate, term, or condition?  
8 A If it pertains to mass market switching  
9 dedicated transport, and enterprise loops  
10 Q If there is an element that was vacated  
11 that is in an agreement that was effective  
12 on June 15th, 2004, and is not mass market  
13 switching, enterprise market loops, and  
14 dedicated transport under your  
15 understanding that is not a frozen rate  
16 term, or condition?  
17 A Correct  
18 Q What happens to it?  
19 A We would initiate change of law to remove  
20 it from the interconnection agreement  
21 It's not impacted by a requirement in the  
22 Interim Rules Order to leave it as it  
23 existed. If the DC circuit or USTA II  
24 vacated what the FCC said we had to  
25 require and it wasn't one of these three

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1 categories, then it's no longer required  
2 and we would take steps to get the  
3 agreement to be compliant with the rules  
4 and the law  
5 Q How could an agreement be compliant in  
6 that event?  
7 A I'm not sure I understand  
8 Q How could -- If someone had a non-frozen  
9 rate, term, or condition --  
10 A Uh-huh  
11 Q -- which we now have an understanding of  
12 what that is, but as of yet it's still  
13 sitting in an interconnection agreement,  
14 what steps would be taken to get that  
15 agreement compliant?  
16 A We would have submitted a change of law  
17 notification to the CLEC saving this --  
18 we're no longer obligated to provide this  
19 element because of the vacatur and it  
20 hadn't been frozen by the Interim Rules  
21 Order, therefore we need to take steps to  
22 remove it from your agreement and whatever  
23 the provisions are in the interconnection  
24 agreement whatever the window is for  
25 parties to negotiate that change of law

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1 would prevail and we'd go through that  
2 motion to get the agreement modified  
3 Q Are there any circumstances under which  
4 BellSouth would provide a non-frozen rate,  
5 term, or condition to a CLEC?  
6 A Well let me back up. A non-frozen  
7 vacated. I mean, there's a whole lot --  
8 Q We are so close. I thought -- I thought  
9 that if there's an element that was  
10 vacated -- vacated and USTA II --  
11 A Uh-huh  
12 Q -- it's in somebody's interconnection  
13 agreement that is effective as of June  
14 15th, 2004 --  
15 A Uh-huh  
16 Q -- but it's not mass market switching  
17 enterprise loops, or dedicated  
18 transport --  
19 A Uh-huh  
20 Q -- then it was non-frozen  
21 A Right  
22 Q So a vacated element can be a non-frozen  
23 rate, term, or condition?  
24 A Yes. I mean, vacated is no longer  
25 available, we don't have an obligation to

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1 keep it in place during the transition of  
2 the interim period  
3 Q Are there any circumstances under which  
4 BellSouth would make it available anyway?  
5 A Certainly, through a commercial agreement  
6 through a tariff, through resale  
7 Q Would the rate be lower than equal to or  
8 higher than a TELRIC rate?  
9 MR MEZA Object to the form  
10 A Since -- Higher  
11 Q So to close this loop what we just  
12 discussed as a frozen rate, term, or  
13 condition is that what you mean on page  
14 11 of your November 12th testimony at  
15 lines 10 to 13?  
16 A Yes in that this issue is talking about  
17 if there's a superseding intervening  
18 order that impacts some of those frozen  
19 rates, terms, and conditions that were  
20 made that way by the Interim Rules Order  
21 Q But frozen here means the same thing --  
22 A Yes  
23 Q -- as it does in S-2?  
24 A Yes  
25 Q I just wanted to make sure that I knew

15 (Pages 57 to 60)

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1 exactly what you meant  
2 If you could please turn to page  
3 13 of your November 12 testimony At  
4 lines 8 to 10 you state that. it is my  
5 understanding that state commissions are  
6 prohibited from issuing orders containing  
7 provisions that conflict with the Interim  
8 Rules Order Do you see that?  
9 A Yes  
10 Q And on what do you base that  
11 understanding?  
12 A Specifically, I think the TRO -- and I  
13 cite to it later in my testimony --  
14 relative to paragraphs 194 195  
15 specifically speak that state commissions  
16 cannot do something that's -- issue an  
17 issue a provision, or an order that's in  
18 conflict with federal requirements  
19 Q Is that the only document on which you  
20 base this conclusion?  
21 A I think there's some reference to it in  
22 the Interim Rules Order as well  
23 Because it identifies in context  
24 of paragraph 29 under what conditions an  
25 intervening state order could impact a

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1 frozen element, and that is only in the  
2 case where the rates increase  
3 Q What would it mean for a state order to  
4 conflict with the Interim Rules Order?  
5 A If it requires us to do something that is  
6 contrary or against what the Interim Rules  
7 Order or an FCC order or federal  
8 requirement requires us to do  
9 Q If the FCC said do X and a state order  
10 said don't do X is that a conflict?  
11 A Again, I'm not an attorney I mean, we'd  
12 have to look at the context of which the  
13 state commission said to do -- not to do  
14 X, if you will, and what the ramifications  
15 were for that  
16 You know my position is that the  
17 Interim Rules Order is -- and BellSouth's  
18 position is the Interim Rules Order is  
19 very clear as to what type of intervening  
20 orders would impact what they decided be  
21 done in the Interim Rules Order It would  
22 be the federal order negotiations -- or  
23 parties could negotiate something  
24 differently or it would be a state order  
25 that raised rates It only specifically

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1 identified FCC intervening orders  
2 Q What's the "it" in that sentence? "It"  
3 only --  
4 A The Interim Rules Order  
5 Q Only recognizes intervening orders of what  
6 type of body?  
7 A The FCC  
8 Q Aside from the more technically complex  
9 you know, matters and issues in  
10 implementation that you sort of alluded to  
11 in your response, essentially at its  
12 essence if the FCC said do this to be  
13 simple, BellSouth crossed the street and  
14 the state commission said BellSouth, do  
15 not cross that street, is that a  
16 conflict?  
17 MR MEZA Object to the form  
18 A Again, I'm not an attorney I mean, I  
19 would think we'd have to weigh, you know  
20 -- again BellSouth complies with its  
21 requirements and orders of the FCC and the  
22 state commission I think the FCC has  
23 been clear, from what I've read, in the  
24 TRO and the Interim Rules Order that  
25 states should not issue rulings that

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1 conflict with federal regime  
2 Q Well, what to you would conflict with the  
3 federal regime?  
4 A Anything that is contrary to it or causes  
5 us to not be able to comply with what the  
6 FCC ordered  
7 Q So an order conflicts with something, if  
8 an order is contrary to something --  
9 MR MEZA Object to the form  
10 Q -- is that a true statement?  
11 A Again, I'm speaking to the words in the  
12 TRO that I cited at 194 195, is very  
13 clear if they you know -- a decision  
14 I'll say it here It's very clearly to me  
15 laid out in the TRO relative to states are  
16 not to issue orders that are in conflict  
17 with the FCC's order  
18 Q Okay If the FCC said all ILECs,  
19 incumbent local exchange carriers, must do  
20 something pursuant to section 251 of the  
21 Act and a state commission issued an  
22 order that said the ILEC or ILECs in this  
23 state has to do something, something  
24 different from what the FCC said a  
25 different subject matter, to be more

16 (Pages 61 to 64)

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1 concrete. the FCC was talking about  
2 switching and the state was talking about  
3 transport are those in conflict?  
4 MR MEZA Object to the form  
5 A I mean it could be If what the state is  
6 asking us to do or ordering us to do is in  
7 conflict with what the federal law  
8 requires pursuant to 251 then that would  
9 be in essence, a conflict It has to be  
10 whatever the law is the federal law  
11 pursuant to our obligations of 251, which  
12 is mandated by the federal law If the  
13 state issues something that frustrates  
14 that or goes against that then that would  
15 be in conflict  
16 Q Is it possible for a state commission to  
17 issue an order regarding local competition  
18 that does not conflict with federal law?  
19 A I don't know I don't know that I can  
20 answer that  
21 Q If you could please look at Exhibit 3,  
22 which is your November 19th testimony  
23 Page 7 You state at lines 9 to 10 --  
24 A Uh-huh  
25 Q -- the unbundling requirement of section

Page 66

1 251 are federally mandated and do not  
2 reference state law  
3 A Uh-huh  
4 Q Do you see that?  
5 A Yes  
6 (DEPOSITION EXHIBIT NO 6 WAS MARKED )  
7 Q I'm handing you a document that's been  
8 marked Exhibit 6  
9 A Uh-huh  
10 Q Do you know what this document is?  
11 A Yeah It appears to be section 251 of the  
12 Telecom Act, 1996  
13 Q And I've put a little green tape flag on  
14 one of the pages for you  
15 A Uh-huh  
16 Q Could you read the text that appears on  
17 that page begins with preservation of  
18 state access regulations?  
19 A In prescribing and enforcing regulations  
20 to implement the requirements of this  
21 section, the Commission shall not preclude  
22 the enforcement of any regulation, order,  
23 or policy of a state commission that one,  
24 establishes access and interconnection --  
25 A. excuse me -- A. establishes access and

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1 interconnection obligations for the local  
2 exchange carriers. B. is consistent with  
3 the requirements of this section, and C.  
4 does not substantially prevent  
5 implementation of the requirements of this  
6 section and the purposes of this part  
7 Q With that understanding or with that text  
8 can you explain to me your position that  
9 251 does not reference state law?  
10 A I was referencing the unbundling  
11 requirements of section 251 in that  
12 context as to -- and this is under the  
13 section of implementation There's other  
14 sections relative to unbundling and  
15 resale  
16 Q So it's your position that the text you  
17 just wrote (sic) does not apply to the  
18 unbundling requirements of section 251?  
19 MR MEZA Object to the form  
20 A I mean, the way I'm reading it, it's under  
21 the implementation of this whole  
22 interconnection -- BellSouth's  
23 interconnection obligations  
24 Q Does this section also encompass  
25 unbundling obligations?

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1 A I mean, it says it's consistent with  
2 requirements of this section Again,  
3 not -- it's kind of hard to read this  
4 back and forth  
5 I mean, the issue is I think,  
6 very pertinent in subpart C of that, that  
7 it doesn't prevent implementation of the  
8 requirements And if the state comes out  
9 with a rule that is against what the FCC  
10 had said we would have difficulty  
11 implementing the requirements of the  
12 section  
13 Q Right Right Well you've testified to  
14 that, but my question was simply does the  
15 section that you just read not have to do  
16 with unbundling obligations under section  
17 251, in your opinion?  
18 A I mean 251 sets forth our unbundling  
19 obligations I would agree with this  
20 Q Does this section speak to those  
21 obligations?  
22 MR MEZA Object to the form  
23 A Yeah, 251 C3 addresses unbundled access  
24 and  
25 MS JOYCE Could you read the

17 (Pages 65 to 68)

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1 question back"  
2 (THE COURT REPORTER READ BACK THE  
3 REQUESTED PORTION OF THE RECORD )  
4 Q All right So let me just ask the  
5 question again The page that I've marked  
6 for you of this --  
7 A Uh-huh  
8 Q -- Exhibit 6 the section that's labeled  
9 preservation of state access regulations.  
10 does that section apply to unbundling  
11 obligations?  
12 A The unbundling obligations as I see it set  
13 forth here are in subpart C -- C3 This  
14 is D3 Whether those are all part of the  
15 -- direct question is asking -- are they  
16 all part of section 251. is that what  
17 you're asking?  
18 Q No My question is does this section.  
19 preservation of state access regulations.  
20 apply to unbundling obligations?  
21 A It does in the context of the first  
22 sentence where it states in prescribing  
23 and enforcing regulations to implement the  
24 requirements of this section the  
25 requirements of this section are the

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1 entire 251, then, yes, it's related But,  
2 however, it shouldn't conflict with any  
3 other requirements set forth in this  
4 section I mean, a state -- state law  
5 shouldn't be able to conflict with this  
6 federal mandate of 251, and that's the  
7 context of what I was saying on my page 7  
8 Q Right Do you have a final answer as to  
9 whether this section applies to unbundling  
10 obligations or not?  
11 A I mean it says what it says  
12 Q But I'm entitled to know what you think it  
13 says  
14 A I mean I think it says what it says I  
15 mean it preserves the state access --  
16 the preservation of state access  
17 regulation so I don't think the -- my  
18 understanding of the intent the FCC in  
19 its -- or in the Act and in the  
20 implementation of the Act put forth the  
21 rules and requirements of what is  
22 required I mean, that's a federal -- and  
23 the TRO and the subsequent orders that  
24 said the state can't do anything that's in  
25 conflict of that And I guess the basis

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1 of saying that unbundling requirements of  
2 251 are federally mandated, does not  
3 reference state law -- I mean, I don't see  
4 the word state law there I mean  
5 Q Do you not know whether this section  
6 applies to unbundling obligations?  
7 MR MEZA Object to form  
8 A Not from a legal aspect no  
9 Q From a policy aspect?  
10 A I mean I read it the way it says in the  
11 implementation of 251 the way it's set  
12 forth here and what it's preserving as far  
13 as state access regulation, and then the  
14 unbundling requirements are federally  
15 mandated and a policy position is the  
16 states cannot do anything that is in  
17 conflict with what the federal  
18 requirements are, notwithstanding what it  
19 says here with respect to preservation of  
20 their state access regulation  
21 Again, if something is -- it has  
22 to be consistent with the requirements of  
23 this section So in that aspect I guess  
24 it does pertain to unbundling, but it's  
25 still limited to be compliant with the

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1 requirements of this section  
2 Q Ms Blake, I believe that you've stated  
3 that you understand that the testimony you  
4 give here today binds BellSouth Do you  
5 remember that?  
6 A Yes  
7 Q And that you have been designated as the  
8 person most knowledgeable at BellSouth on  
9 the issues for which you've provided  
10 testimony?  
11 A Yes  
12 Q So do you understand that for practical  
13 purposes, you sit here as BellSouth  
14 today?  
15 A Yes I said that  
16 Q So is it your testimony that BellSouth  
17 does not know whether this section of the  
18 statute in front of you applies to  
19 unbundling or not?  
20 A Yes this 251 is the unbundling obligation  
21 set forth in the Act The question was  
22 pertaining to state law and the comment of  
23 whether states are precluded from doing  
24 anything that is contrary to federal  
25 unbundling requirements

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1 Q Right But my question is, this section,  
2 the one that you read into --  
3 A Uh-huh  
4 Q -- the record here at page 318,  
5 preservation of state access regulations  
6 does BellSouth know whether that section  
7 of this statute apply to unbundling?  
8 MR MEZA Object to the form  
9 A I mean I think BellSouth's position is  
10 this section applies -- this subsection  
11 is applied in the context of the overall  
12 section It's all part of the same  
13 section  
14 Q Does it apply to unbundling or not?  
15 A It applies to the implementation of the  
16 Act  
17 Q Does it apply to unbundling? I'm entitled  
18 to a yes or no answer It's in your  
19 testimony  
20 A I mean, I think the requirements of 251  
21 speak for itself I mean, the unbundling  
22 obligations set forth in section 251 in  
23 this implementation is a subset -- is a  
24 part of section 251, as are the unbundling  
25 obligations

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1 Q Do you not know the answer to my question?  
2 A I'm not sure I understand the question  
3 MR MEZA Objection to the form  
4 It's been asked and answered several times  
5 now  
6 MS JOYCE She hasn't answered  
7 the question, actually  
8 Q And I'm not trying to be difficult, but I  
9 just need to know whether or not BellSouth  
10 knows whether preservation of state access  
11 regulations subpart 3, applies to ILEC  
12 unbundling obligations It's not about  
13 conflicts, not about implementation of  
14 this or that Does this subsection apply  
15 to unbundling?  
16 MR MEZA I'd lodge the same  
17 objection  
18 A I mean it is a section of 251, and 251  
19 addresses multiple aspects of the Act and  
20 our obligations of the Act, so it is a  
21 part of the 251 requirement  
22 Q The day is drawing long, and so I'm going  
23 to ask you this  
24 A I'm sorry  
25 Q Can you -- Sitting here, can you give me a

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1 yes or no answer to the question --  
2 (DISCUSSION OFF THE RECORD )  
3 Q Are you able to give me a yes or no answer  
4 to the question whether the subpart that  
5 you read, preservation of state access  
6 regulations applies to unbundling? Can  
7 you answer that question in a yes or no  
8 form?  
9 A I would say, yes, it does  
10 Q At page 13 --  
11 MR MEZA Which version?  
12 Q -- of your November 12th testimony.  
13 Exhibit 2  
14 A Page what? I'm sorry?  
15 Q Page 13  
16 A 13  
17 Q The position you take at lines 8 to 10 --  
18 A Uh-huh  
19 Q -- did you do any legal research to arrive  
20 at that conclusion?  
21 A I think I answered before, I'm not sure  
22 what you mean by legal research I'm not  
23 familiar with what is involved in legal  
24 research I read the Interim Rules  
25 Order If that's considered legal

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1 research then --  
2 Q Did you read any court cases?  
3 A I read the USTA II, parts of it, not  
4 probably all of it, but --  
5 Q Did you read any other court cases?  
6 A The TRO, not court but FCC  
7 Q Do you know whether Ms McClurkin did any  
8 legal research on this position?  
9 A She could have, yes  
10 Q Could Mr Harper have done so?  
11 A Certainly  
12 Q Did they communicate to you that they had  
13 done so?  
14 A Well again, it's in the context of  
15 whatever legal research is I mean,  
16 reviewing orders and reading orders and  
17 reading decisions would have been involved  
18 in you know assisting and developing my  
19 testimony  
20 Q Were they instructed to do so?  
21 A To do legal research?  
22 Q Yes  
23 A No  
24 Q A few lines down in this same  
25 paragraph --

19 (Pages 73 to 76)

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1 A Uh-huh  
2 Q -- on page 13 --  
3 A Uh-huh  
4 Q -- beginning at line 12, you have a  
5 quotation that starts and it says the  
6 frozen rates, terms, and conditions shall  
7 remain in place, and it goes on Do you  
8 see that?  
9 A Yes  
10 Q Where did the words in brackets come  
11 from?  
12 A Me  
13 Q So those words don't appear in the  
14 order --  
15 A That's why they're bracketed, they're not  
16 part of the quotation cite to the order  
17 Q Lines 20 to 21 on this same page  
18 Ms. Blake --  
19 A Uh-huh  
20 Q -- you state that BellSouth's position is  
21 consistent with the Telecommunications Act  
22 of 1996, in parens the Act --  
23 A Uh-huh  
24 Q -- close parens On what do you base this  
25 conclusion?

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1 A We are where we are today based on all the  
2 eight years of -- since the Act came out  
3 of the different orders, and BellSouth  
4 complies with the Act and the rules that  
5 implemented the Act, and any of the  
6 subsequent rules that have been issued  
7 gets us to where we are so the underlying  
8 document or requirement as set forth in  
9 the Act and as the interpretation of the  
10 Act and the rules surrounding how the Act  
11 is interpreted is what we're complying  
12 with Sorry  
13 Q So are you basing that conclusion in part  
14 on the 1996 Act?  
15 A On the Act and on the subsequent rules  
16 that the FCC issues, the various court  
17 decisions that have been issued, and  
18 Q Any other documents?  
19 A I guess all the various first reports,  
20 second report third report from the FCC's  
21 initial local competition order, and all  
22 the subsequent rulings that have come out  
23 with that that implemented the Act  
24 Q Have you read the local competition rules?  
25 A No I mean, parts of it but not all

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1 Q Do you recall any other FCC orders  
2 that --  
3 A UNE remand order that came in '99 and the  
4 supplemental orders and supplemental order  
5 clarifications and those type things  
6 Q Were FCC orders the only types of  
7 documents on which you were -- supported  
8 this statement on page 13?  
9 A I think that's the -- no I mean, that's  
10 the foundation for complying with the Act  
11 is the rules that implemented the Act  
12 Q So your answer is no other documents  
13 besides FCC?  
14 A There may have been I mean I can't tell  
15 you everything I've looked at since '97 or  
16 before  
17 Q Were they court decisions other than USTA  
18 II?  
19 A There could have been yeah, supreme court  
20 on the combination rules and TELRIC  
21 decisions I mean, the supreme court  
22 decisions in the past, but, you know,  
23 again  
24 Q On page 15 of your November 12th  
25 testimony --

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1 A I'm sorry, page?  
2 Q 15  
3 A 15 of the 12th, okay  
4 Q Beginning at line 8 where it says, the  
5 FCC's reasoning Do you have that  
6 paragraph?  
7 A Yes  
8 Q Does this sentence that appears at lines 8  
9 to 11 summarize your understanding of the  
10 Joint Petitioners' testimony in this case?  
11 A Let me back up here Yeah I mean  
12 that -- that's one aspect of their  
13 position Again, this order is dealing  
14 with intervening orders, and I believe the  
15 Joint Petitioners are attempting to  
16 incorporate state orders which was not  
17 the intent from my reading of the Interim  
18 Rules Order It was limited to FCC  
19 intervening orders  
20 Q And the testimony on page 15, this was  
21 about Issue S-2 would you agree?  
22 A Yes which is intervening orders that the  
23 FCC adopted, uh-huh  
24 (DEPOSITION EXHIBIT NO 7 WAS MARKED )  
25 Q I'm handing you a document marked Exhibit

20 (Pages 77 to 80)

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1 7  
2 A Okay  
3 Q Do you recognize this document?  
4 And let the record reflect it's an  
5 excerpt of the whole document  
6 A Okay  
7 Q It's not the whole document  
8 A Yes It appears to be the refiled  
9 testimony of the Joint Petitioners in  
10 North Carolina  
11 MR MEZA Excuse me What  
12 exhibit is this?  
13 MS JOYCE No 7  
14 Q And do you see that the pages you have are  
15 the title page --  
16 A Uh-huh  
17 Q -- and then you have Joint Petitioners'  
18 testimony on Issue S-2 Do you see that?  
19 A Yes  
20 Q Can you tell me where in this excerpt of  
21 testimony the Joint Petitioners have taken  
22 the position that the NCUC should, as you  
23 state in your testimony, require BellSouth  
24 to adhere to state-imposed unbundling  
25 requirements regardless of whether such

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1 requirements violate or are inconsistent  
2 with federal law?  
3 (PAUSE )  
4 A I think on page 144 in regards to Issue  
5 S-2(B), which deals with intervening state  
6 orders  
7 Q And which lines of this page are you  
8 looking at?  
9 A Line 13 specifically Starting at line  
10 13  
11 Q Are you referring to the testimony Joint  
12 Petitioners' position with regard to issue  
13 number S-2(B) --  
14 A Yes  
15 Q -- is much the same as their position with  
16 regard to Issue S1 and S-2(A)?  
17 A Yes  
18 Q And what about that statement indicates  
19 that the Joint Petitioners want the NCUC  
20 to impose unbundling requirements  
21 regardless of whether they violate or are  
22 in inconsistent with federal law?  
23 (PAUSE )  
24 A I mean I think the initial position that  
25 I was referring to most likely was

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1 dictated by the position of the issues  
2 matrix I think that the issue subpart B  
3 wasn't something we felt was appropriate  
4 to even be addressed in this  
5 Q May I direct your attention to the last  
6 page of this exhibit, please At the  
7 bottom it says 149  
8 A Uh-huh  
9 Q Lines 9 to 11 And this is the end of  
10 Joint Petitioners' testimony on Issue S-2  
11 A Okay I'm sorry  
12 Q Do you see where it states this  
13 Commission has the power to create its own  
14 unbundling rules --  
15 A Uh-huh  
16 Q -- and requirements so long as such rules  
17 do not conflict with federal unbundling  
18 requirements?  
19 A Yes I see that  
20 Q Having seen that, do you still think that  
21 Joint Petitioners take a position that the  
22 NCUC should require BellSouth to adhere to  
23 state-imposed unbundling requirements,  
24 regardless of whether such requirements  
25 violate or are inconsistent with federal

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1 law, as stated in your testimony?  
2 A I mean, I think part of it ties back  
3 to -- I mean, the first issue -- and I  
4 don't have the S1 testimony here, but, I  
5 mean, it was all kind of the same vein  
6 through a lot of the supplement issues in  
7 my opinion, when I read their position  
8 and the issues appeared to be trying to  
9 expand the scope and incorporate state  
10 decisions like pricing of 271  
11 obligations And, again, it may not be  
12 specifically tied to this issue  
13 Q Would you agree that the lines 9 through  
14 11 on the last page of Exhibit 7 do not  
15 support the statement that you make on  
16 page 15 of your testimony?  
17 A Yeah, it doesn't support what is stated  
18 here, but, again, I think through the  
19 evolution of the issues matrix, there  
20 possibly could have been some positions  
21 taken -- and, again, I don't have the old  
22 issues matrix as it's evolved -- wherein  
23 the Joint Petitioners, in my opinion,  
24 appeared to be contending that the states  
25 could do something outside of the federal

21 (Pages 81 to 84)

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1 requirements  
2 Q And Ms Blake if I may direct you again  
3 to page 15 of your testimony  
4 A Uh-huh  
5 Q Lines 18 to 19  
6 A Okay  
7 Q There's a statement that says additional  
8 unbundling obligations under state law  
9 would be valid without the state  
10 commission performing an impairment  
11 analysis Do you see that?  
12 A Yes  
13 Q On what do you base that conclusion?  
14 A Just that before something can be required  
15 to be unbundled an impairment analysis  
16 has to be performed  
17 Q How do you know that?  
18 A 251  
19 Q Are you looking at Exhibit 6?  
20 A Yes (d)(2)(b)  
21 Q Are you referring to the language section  
22 251 (d)(2), access standards?  
23 A Yes  
24 Q And what in that section do you rely on  
25 with regard to the statement about states

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1 performing an impairment analysis?  
2 A In determining what network elements  
3 should be made available for purposes of  
4 subsection (c)(3) which pertains to the  
5 unbundling obligation The Commission  
6 shall consider at a minimum whether access  
7 proprietary -- or proprietary nature is  
8 necessary That's a necessary part of the  
9 necessary impair And then (b) is the  
10 failure to provide such access would  
11 impair the ability of a CLEC to provide  
12 the service  
13 Q Which commission is that?  
14 A This is pertaining to the FCC, but again  
15 if the state commission were to determine  
16 that unbundling an element was required to  
17 be unbundled it too would have to perform  
18 the same basic necessary impair so as not  
19 to conflict with the federal law  
20 Q Do you know whether the state of North  
21 Carolina has a statute analogous to  
22 section 251?  
23 A No, I don't know  
24 Q Do you know if any other state in the  
25 BellSouth region has a statute analogous

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1 to section 251?  
2 A No I don't  
3 Q So you don't know whether this impairment  
4 analysis obligation appears in any state  
5 statute?  
6 MR MEZA Object to the form  
7 A No, I don't  
8 Q If you could turn the page, page 16 of  
9 your November 12th testimony, please  
10 A Okay  
11 Q At lines 9 to 13, you say that a patchwork  
12 regulatory environment would not only  
13 conflict with the Act and the FCC's  
14 expressed findings but also result in  
15 state commissions frustrating the national  
16 regulatory scheme implemented by congress  
17 through the Act Do you see that?  
18 A Am I on the right one?  
19 Q November 12th page 16 It's the end of  
20 S-2  
21 A Okay It is not policy --  
22 MR MEZA Lines continue through  
23 13  
24 THE WITNESS Okay  
25 Q Start with patchwork regulatory

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1 environment  
2 A Okay I'm sorry Got that  
3 Q You say there could be potentially ten  
4 different rules pertaining to same  
5 services?  
6 A Right  
7 Q Such an inefficient environment not only  
8 conflicts with the Act and the FCC's  
9 express findings Let me stop there  
10 A Uh-huh  
11 Q On what do you base that position that a  
12 patchwork regulatory environment conflicts  
13 with the Act and the FCC's express  
14 findings?  
15 A Well I base it on my understanding that  
16 the Act and the FCC have set forth the  
17 requirements for unbundling and the FCC's  
18 implemented the Act's requirements for  
19 unbundling and those rules set forth how  
20 we provide unbundled elements consistent  
21 with the Act And if we were required to  
22 in some states do unbundled -- or do  
23 something that was in conflict with that  
24 requirement and each state did its own  
25 little twist to it, that, in essence, gets

22 (Pages 85 to 88)



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1 to our ten different rules, if you will  
2 pertaining to an unbundling -- or  
3 pertaining to the same service. They  
4 could do ten different things -- nine  
5 states and the FCC  
6 Q Why didn't the Act conflict with the  
7 notion of a patchwork regulatory  
8 environment, as you put it?  
9 MR MEZA Object to the form  
10 A Well, it is a federal -- federal act. I  
11 mean federal government, so I don't think  
12 the intent was to have 50 different pieces  
13 conflicting with the one requirement of  
14 the Act. It was from the FCC or from the  
15 federal government.  
16 Q Are you basing that understanding on any  
17 specific provision of the Act?  
18 A No, just practical. I mean practical  
19 application, how it would work. I mean, I  
20 think that was part of the reason they --  
21 the DC circuit probably vacated the  
22 subdelegation to the state, you could have  
23 50 different things unbundled.  
24 Q Are you familiar with concerns on  
25 delegation to states as a legal principal?

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1 MR MEZA Objection to form  
2 A No  
3 MS JOYCE Did you get the answer  
4 and the objection?  
5 THE COURT REPORTER Uh-huh  
6 Q Which FCC express finding is  
7 conflicting -- strike that  
8 Which would conflict with a  
9 patchwork regulatory environment?  
10 A Well, I think the FCC set forth the rules  
11 to implement the Act. And in the context  
12 of this, it's trying to implement those  
13 rules. And if the 50 states -- or the 9  
14 states come out with different rules that  
15 conflict with that, I don't -- I don't  
16 believe that was what the intent of the  
17 FCC was. It was to implement unbundling  
18 rules so there's competition and the  
19 market's open. And if the states issued  
20 something that conflicts with that, it, to  
21 me, would be counterintuitive to what they  
22 were doing.  
23 Q Is that your intuitive judgment?  
24 A That's my laymen's -- yes, my position.  
25 yes

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1 Q And I'd like to turn now to Exhibit 3  
2 your November 19th testimony, at page 6  
3 At lines 13 to 14, you say that this  
4 issue -- and we can agree this is issue  
5 S-2 --  
6 A Uh-huh  
7 Q -- as noted on the previous page --  
8 exceeds the parties' agreement regarding  
9 the type of issues that could be raised  
10 after the 90-day abatement period. Do you  
11 see that?  
12 A Yes  
13 Q Which agreement is that?  
14 A That would be the agreement we reached to  
15 initiate the abatement, petition the  
16 states for 90-day abatement period as to  
17 what we agreed would be included, what  
18 would happen during that abatement period  
19 and then subsequently what issues --  
20 subsequent issues would be included in the  
21 arbitration.  
22 Q And is that agreement recorded anywhere?  
23 A It's filed in this proceeding between the  
24 attorneys.  
25 Q And what did you mean by "this

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1 proceeding"?  
2 A This arbitration proceeding.  
3 Q In North Carolina?  
4 A Yes.  
5 (DEPOSITION EXHIBIT NO. 8 WAS MARKED.)  
6 Q I'm handing you a document marked Exhibit  
7 8.  
8 A Uh-huh.  
9 Q Have you seen this document before?  
10 A Yes, I have.  
11 Q And what is it?  
12 A This is the joint motion to hold the  
13 proceedings in abeyance that was filed  
14 with the North Carolina Utilities  
15 Commission July 12th, 2004.  
16 Q Is this the type of document that you're  
17 referring to as recording the agreement of  
18 the parties?  
19 A Yes, and then there was a subsequent  
20 agreement reached in regards to the --  
21 incorporating the Interim Rules Order into  
22 the arbitration issues as well as issues  
23 relative to the Interim Rules Order in  
24 this arbitration.  
25 Q And where is that agreement recorded?

23 (Pages 89 to 92)

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1 A I don't know that it's officially recorded  
2 anywhere I believe there was an  
3 agreement between the parties in this  
4 arbitration  
5 Q About how to incorporate the Interim  
6 Rules?  
7 A Because at the time this was filed, the  
8 Interim Rules were not out They came out  
9 in August And realizing we were in the  
10 90-day abatement period, the parties  
11 agreed -- my understanding is we agreed to  
12 include Interim Rules Order -- issues  
13 related to the Interim Rules Order into  
14 this arbitration  
15 Q So your testimony at lines 13 to 14 on  
16 this page 6 are you referring to two  
17 agreements in that sentence?  
18 A Yes because there was still part of the  
19 abatement period Whether there's an  
20 agreement, an understanding -- you know,  
21 I'm not going to speak to the legalities  
22 of that or how it was communicated between  
23 the parties, but that's my understanding  
24 of how we got to where we are with the  
25 supplemental issues

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1 Q Are you aware that there were motions  
2 filed in all the BellSouth states to  
3 implement the abatement period in this  
4 arbitration?  
5 A Yes  
6 Q Would you consider all of those motions to  
7 be part of the agreement between the  
8 parties regarding the type of issues that  
9 could be raised?  
10 A Yes it's my understanding they're  
11 consistent state to state  
12 Q Well let's look at Exhibit 8 And it's  
13 short thankfully  
14 What in this joint motion  
15 indicates that the ability or possibility  
16 of state commissions issuing orders cannot  
17 be raised after the 90-day abatement?  
18 MR MEZA Object to the form  
19 A Well I'm not sure it's specifically set  
20 forth in here excluding the state rulings  
21 or consideration of state decisions in  
22 this arbitration, but the inherent basis of  
23 a 252 arbitration is to comply with 251  
24 obligations into agreements that are  
25 compliant with those obligations set forth

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1 in 252 They're not to incorporate state  
2 requirements that are beyond our  
3 obligations of 251 That is the  
4 inherentness of a 252 arbitration limited  
5 to obligations required pursuant to 251  
6 so  
7 Q And this inherentness that you reference  
8 do you consider that to be part of the  
9 parties' agreements that you reference on  
10 page 6 of your testimony?  
11 A Well it wasn't -- the ability to include  
12 state commission issues or activities  
13 or -- additional unbundling set forth by  
14 the state wasn't included in here And  
15 like I said by the nature of a 252  
16 arbitration, it's limited to 251  
17 obligations which are federal  
18 requirements  
19 Q When you said "included in here" what  
20 were -- what is "here"?  
21 A I'm sorry, in this petition, joint motion  
22 to hold the proceeding in abeyance This  
23 was specifically talking about the USTA II  
24 decision and the fact that we needed to  
25 incorporate the impact of USTA II and get

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1 a USTA II-compliant agreement  
2 Q So the agreement that you reference on  
3 page 6 of your testimony, is it fair to  
4 say that it encompasses the motions to  
5 hold in abeyance that were filed in all of  
6 the BellSouth states another agreement  
7 regarding implementing the Interim Rules  
8 Order as well as an understanding of the  
9 nature of a section 252 arbitration?  
10 A Well I mean the nature of a 252  
11 arbitration existed prior to the  
12 abatement I mean, that's the foundation  
13 of a 252 arbitration It addresses 251  
14 obligations not state unbundling  
15 requirements or state -- any other  
16 state-initiated requirements It's to  
17 address what you're obligated under  
18 252 -- under our 251 obligations This  
19 motion was -- addressed what happens after  
20 the abatement period That existing  
21 requirement, if you will, that an  
22 arbitration is inherently just limited to  
23 251 obligation was expanded if you will,  
24 to address the USTA II issues related to  
25 USTA II implementation and subsequently

24 (Pages 93 to 96)

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1 the Interim Rules Order  
2 Q Is it your position that state commission  
3 orders and rules were never considered in  
4 this arbitration?  
5 A Not if they're beyond a 252 obligation --  
6 I mean 251 obligation I'm sorry  
7 Q If they were not part of a 251 obligation  
8 they would not be included in this  
9 arbitration?  
10 A A 252 arbitration, it's my understanding,  
11 is limited to our obligations under 251  
12 I mean, there may be agreements or issues  
13 that we reach agreement on that may  
14 encompass other state's requirements or  
15 other requirements not even contemplated  
16 by any rule or order but that would be  
17 through the negotiation process If an  
18 issue is involved in a 252 arbitration, it  
19 would be pursuant to our obligations of  
20 251  
21 Q Is it your testimony that a state  
22 commission order or rule is irrelevant to  
23 this arbitration?  
24 MR MEZA Object to the form  
25 A No I mean, I'm not saying we won't

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1 comply with state orders or laws, but in  
2 the context of what the commission is to  
3 arbitrate and to resolve in regards to the  
4 issues that are teed up before it are to  
5 be in the context of our obligations under  
6 251  
7 Q In North Carolina, for example in this  
8 arbitration, does the North Carolina  
9 Commission have the authority to enforce  
10 North Carolina unbundling rules?  
11 A I guess I'm not aware of any North  
12 Carolina unbundling rules  
13 Q In Georgia does the Georgia PFC have the  
14 authority in this arbitration to enforce  
15 its unbundling rules?  
16 A Not if -- Again, not knowing if there are  
17 specific Georgia unbundling rules, but if  
18 there are such things they cannot be in  
19 conflict with federal unbundling rules  
20 Q Is your answer the same for all of the  
21 other BellSouth states?  
22 A Yeah subject to them having state  
23 unbundling rules  
24 Q Could you summarize for me why Issue S-2  
25 should not be considered in this

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1 arbitration?  
2 MR MEZA S-2 or S-2(B)?  
3 THE WITNESS Yeah  
4 MS JOYCE Well --  
5 MR MEZA We have issues on this  
6 MS JOYCE Well I can only refer  
7 to her testimony, and it doesn't have an A  
8 of a B I'm just looking at page 6 of the  
9 November 19th  
10 A I didn't contend that our issues statement  
11 should be in this arbitration  
12 Q I didn't even think of that  
13 MR MEZA Well if you look at  
14 the context of -- and I don't mean to  
15 interject, but I think it's clear by line  
16 9 what she's referring to their issue  
17 statement  
18 Q All right Is it your intention that  
19 Issue S-2(B) which is articulated by the  
20 Petitioners, should not be considered in  
21 this arbitration?  
22 A Yes  
23 Q And can you summarize why?  
24 A Well, again, it pertains to a state  
25 intervening order And again, I think

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1 this goes back to either your  
2 testimony -- I think it goes back to some  
3 of the earlier issue statements and just  
4 the fact that you framed the issue that  
5 way that said, should a state intervening  
6 order be included? I guess my fundamental  
7 question back to the Joint Petitioners  
8 would be if the testimony says it  
9 shouldn't be then why did you tee it up  
10 as an issue? That's an issue  
11 But, nevertheless, you know our  
12 position is that a state intervening order  
13 is not relevant to this issue in the  
14 context of the Interim Rules Order  
15 Q And also your position has to do with the  
16 parties' agreement or no?  
17 A Yes I mean it -- it's all -- the  
18 agreement had to do with USTA II and the  
19 Interim Rules Order we negotiate during  
20 abatement period and get those issues teed  
21 up for agreement on those -- the impacts  
22 of those decisions in that order and get  
23 -- anything we couldn't resolve, get it  
24 teed up in this arbitration so it could  
25 get resolved

25 (Pages 97 to 100)

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1 Q Do you know what the term jurisdiction  
2 means?  
3 A Not a --  
4 MR MEZA Object to the form  
5 Sorry Go ahead  
6 A Under the purview of or -- under the  
7 purview or has the -- the ability to do  
8 something or authority to do something  
9 Q With that understanding do you think that  
10 the North Carolina Commission has the  
11 jurisdiction to review issue S-2(B)? Look  
12 at Exhibit 7  
13 A I got it Yeah I'm sorry can you ask  
14 the question again?  
15 Q Is it your position that the North  
16 Carolina Commission does not have  
17 jurisdiction to review Issue S-2(B)?  
18 MR MEZA Objection to the form  
19 A The jurisdiction to address Issue 2(B)? I  
20 don't think they do in the context that it  
21 wasn't part of the agreement between the  
22 parties in the abatement It was limited  
23 to USTA II and USTA II and the Interim  
24 Rules Order and the Interim Rules Order  
25 only spoke to intervening FCC orders

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1 Q Aside from the agreement on abatement  
2 pretending it didn't happen would the  
3 state commission in North Carolina have  
4 jurisdiction to discuss the application of  
5 intervening state commission orders?  
6 A I think they could address them, but they  
7 would need to be addressed in the context  
8 of not being in conflict with the federal  
9 unbundling requirements  
10 Q And only for that reason?  
11 A There may be other legal reasons I don't  
12 know as far as the details of their  
13 jurisdiction or -- from that aspect of  
14 it  
15 Again, they may think they have  
16 jurisdiction to do a lot of things that we  
17 may disagree with or other parties may  
18 disagree with or the FCC may disagree  
19 with  
20 Q So they may or may not have jurisdiction  
21 if the parties had not filed the abatement  
22 agreement?  
23 A Well, again it goes back to the whole  
24 issue as it pertains to a 252  
25 arbitration It's to arbitrate

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1 BellSouth's obligations pursuant to 251  
2 So in that context it's limited to 251  
3 Q Do you know when the agreement was reached  
4 between the parties regarding the  
5 implementation of the Interim Rules Order?  
6 A It would have to have been after August  
7 20th when the Interim Rules came out and  
8 they weren't effective until September  
9 13th, so I don't know -- somewhere around  
10 that window I don't -- I don't know the  
11 specific date or the context of what that  
12 agreement -- how that agreement was  
13 reached  
14 Q And you don't know if it's written down  
15 anywhere?  
16 A I imagine there's some e-mail somewhere, I  
17 don't know between attorneys  
18 Q Returning to Exhibit 2, page 16 This is  
19 your November 12th testimony  
20 A I'm sorry, page?  
21 Q 16  
22 A Okay  
23 Q Lines 15 to 17 Do you see that?  
24 A Lines -- yeah, the issues -- yes  
25 Q Is that something -- Do you call that an

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1 issue statement?  
2 A Yes  
3 Q And BellSouth consents to the way this  
4 issue statement is worded, to your  
5 knowledge?  
6 A This is BellSouth's issue statement, I  
7 don't recall if we have a competing issue  
8 statement with y'all or not the Joint  
9 Petitioners or not We'd have to look  
10 at --  
11 Q So this is BellSouth's --  
12 A Yes  
13 Q -- issue statement?  
14 The issue statement reads if FCC  
15 04-179 is vacated or otherwise modified by  
16 a court of competent jurisdiction --  
17 A Uh-huh  
18 Q -- how should such order or decision be  
19 incorporated into the agreement? And  
20 that's the issue S-3 --  
21 A Yes  
22 Q -- statement  
23 A Uh-huh  
24 Q At lines 21 to 22 of your testimony that  
25 follows, you say that this issue addresses

26 (Pages 101 to 104)

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1 the possibility that the DC circuit or  
2 another court of competent jurisdiction  
3 invalidates or vacates the Interim Rules  
4 Order  
5 A Right  
6 Q I'm just noting there's a difference  
7 between vacated or otherwise modified  
8 language in the issue statement and the  
9 testimony that says invalidates or  
10 vacates  
11 A Well I guess I would interpret otherwise  
12 modified to be a form of invalidating or  
13 validating to be a form of otherwise  
14 modifies  
15 Q Could invalidates -- Could a court  
16 invalidate something by remanding it in  
17 your opinion?  
18 A I think it -- I don't know I mean, it  
19 would have to be looked at on -- exactly  
20 what they did in that decision  
21 Q But just generally speaking, to invalidate  
22 by a court, could that be a remand?  
23 MR MEZA Object to the form  
24 A I mean it could be Invalidate could  
25 mean it makes it null and void or no

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1 longer exists or -- yeah makes it no  
2 good  
3 Q Could a court modify an order in a way  
4 that doesn't invalidate it?  
5 A I guess I don't know I mean, I would  
6 think a court can do all sorts of creative  
7 things  
8 Q At page 17 of this testimony, lines 4 to  
9 5  
10 A 17. okay  
11 Q Actually 4 to 6  
12 A Uh-huh  
13 Q In the event a court of competent  
14 jurisdiction vacates all or part of the  
15 Interim Rules Order there will be no  
16 valid impairment finding with respect to  
17 the vacated elements Do you see that?  
18 A Yes  
19 Q Why do you think there would be no valid  
20 impairment findings?  
21 A Well it's discussing the Interim Rules  
22 Order, and the Interim Rules Order, as we  
23 discussed before froze certain aspects of  
24 the vacated elements So if the DC  
25 circuit has already determined that the

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1 elements were vacated and didn't exist but  
2 the Interim Rules Order sort of put them  
3 back in place for this interim transition  
4 period so that interim -- putting them  
5 back in place by the Interim Rules Order  
6 is vacated or -- all or in part whatever  
7 they vacated all or in part no longer  
8 exists  
9 Q Is it your testimony that the USTA II  
10 court invalidated impairment findings?  
11 A It vacated the TRO -- the termination by  
12 the FCC and the TRO in respect to the  
13 national impairment findings with regard  
14 to mass market switching and dedicated  
15 transport The delegation was sent to the  
16 state  
17 Q Which impairment findings specifically did  
18 the USTA II court address?  
19 A Well they vacated the subdelegation to  
20 the states of the decision-making  
21 authority over impairment determinations  
22 and they also vacated and remanded the  
23 commission's nationwide impairment  
24 determination with respect to mass market  
25 switching and transmission -- enterprise

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1 loops  
2 Q Are you reading from the second to last  
3 page of Exhibit 5?  
4 A Yes  
5 Q And are you referring to the paragraph  
6 beginning, to summarize?  
7 A Yes  
8 Q And it states here that we as in the  
9 court vacate the commission's  
10 subdelegation to state commissions of  
11 decision-making authority over impairment  
12 determinations, is that --  
13 A Yes  
14 Q -- some of the language?  
15 A Yes  
16 Q And is it your testimony that this  
17 sentence invalidates impairment findings?  
18 A Not particularly that sentence but it's  
19 actually the last sentence that vacates  
20 and remands the commission's nationwide  
21 impairment determination with respect to  
22 these elements  
23 Q Which elements are "these elements"?  
24 A The elements in the context of my reading  
25 of the USTA II is the mass market

27 (Pages 105 to 108)

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1 switching and the enterprise loops and the  
2 dedicated transport as defined by the  
3 TRO  
4 Q Where do you see enterprise loops as being  
5 a vacated element?  
6 A In the context of dedicated transport,  
7 there's discussion throughout the parts of  
8 the USTA II that make reference to  
9 transmission facilities. I can probably  
10 find it here in a minute but -- let me  
11 see Page 15  
12 Q Yes  
13 A The note 4 I guess under the italicized  
14 unlawfulness of the delegation of the  
15 states and national. The Commission made  
16 multiple impairment findings with respect  
17 to dedicated transport elements  
18 transmission facilities dedicated to a  
19 single customer. Transition facilities  
20 dedicated to a single customer is a loop  
21 Q Is your understanding?  
22 A Yeah. And then the carrier part would get  
23 to the transport by encompassing -- that's  
24 our interpretation of inclusion of loops  
25 in transport

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1 Q So this is the sentence you refer to when  
2 you say that enterprise loops were  
3 vacated?  
4 A Yeah. Yes  
5 Q Are there any other impairment findings  
6 that USTA II invalidated?  
7 A I mean there were -- under the  
8 conclusion there's different, you know  
9 aspects into what the commission  
10 considered as they were conducting an  
11 impairment analysis relative to the  
12 availability of tariff special access. I  
13 mean just some of the aspects related to  
14 the whole impairment analysis. They were  
15 vacated and remanded -- and remanded it  
16 back to the FCC to do it over  
17 Q Are you reading from the second paragraph  
18 under Roman VI conclusions on the second  
19 to last page --  
20 A Yes  
21 Q -- of Exhibit 5?  
22 The end of that paragraph reads,  
23 we, therefore, vacate and remand the  
24 decision that wireless carriers are  
25 impaired without unbundled access to ILEC

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1 dedicated transport. Do you see that?  
2 A Right. Yes  
3 Q So which impairment findings were vacated  
4 by this paragraph?  
5 A Well, they vacated the finding that  
6 wireless carriers were impaired without  
7 access to dedicated transport. Is my  
8 reading of that  
9 Q Were there any other impairment findings  
10 that the USTA II court validated?  
11 A None that come to mind that -- relative to  
12 what I testified to here  
13 Q So were there some impairment findings in  
14 the TRO that were not invalidated by the  
15 USTA II court?  
16 A Will you say that again?  
17 Q Were there some impairment findings in the  
18 TRO that were not invalidated by the USTA  
19 II court?  
20 A I can't think of any right now. I mean,  
21 the main ones that are impacted by the  
22 Interim Rules Order were the mass market  
23 and enterprise loops and the dedicated  
24 transport as they pertain to these  
25 supplemental issues that we've teed up

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1 here  
2 Q And can you define for me your  
3 understanding of enterprise loop?  
4 A DS1, DS3 and dark fiber loop. There is  
5 something they did take -- wait, let me  
6 think. Nope. Never mind. Sorry. I was  
7 thinking of something else  
8 Q Would an enterprise loop include a DS0?  
9 A No  
10 Q And on what do you base that definition?  
11 A I think the TRO's definition of loops  
12 identifies -- it's paragraph 249. I cite  
13 in my testimony -- defines the TRO  
14 definition of the loop as being DS1, DS3  
15 Yeah, paragraph 249 of the TRO  
16 Q Can you explain to me if a court of  
17 competent jurisdiction vacates part of the  
18 Interim Rules Order --  
19 A Uh-huh  
20 Q -- that there would be no valid impairment  
21 findings?  
22 A If the -- part of the Interim Rules Order  
23 that they vacate, for example, said we  
24 have to continue to provide mass market  
25 switching during the transition period, if

28 (Pages 109 to 112)

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1 a court of competent jurisdiction vacated  
2 that part of the Interim Rules Order. that  
3 would mean we don't have to provide mass  
4 market switching during this interim  
5 transition period because that was  
6 previously vacated by USTA II  
7 Q So is -- what you meant whatever part of  
8 the Interim Rules Order is vacated --  
9 A Yes  
10 Q -- the corresponding impairment findings  
11 would be invalidated?  
12 A Correct Right  
13 Q Not all of them?  
14 A Unless they were all addressed by the  
15 decision by the court of competent  
16 jurisdiction  
17 Q Okay Also at page 17 lines 9 to 10 --  
18 A Uh-huh  
19 Q -- you say the parties should invoke the  
20 transition process identified in Item No  
21 23 to convert vacated elements to  
22 comparable non-UNE services?  
23 A Correct  
24 Q Do you see that?  
25 A Uh-huh Yes

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1 Q Do you agree that Item No 23 or, as  
2 Petitioners call it issue 2-5 is  
3 presently disputed?  
4 A Yes  
5 Q If the Petitioners' position on issue 2-5  
6 were adopted by a state commission, is  
7 that the process that BellSouth would then  
8 seek to invoke?  
9 A It depends on what was decided on  
10 Probably not I mean, we'd have to see  
11 what the transition was that was adopted  
12 I mean, we'll comply with whatever we're  
13 required out of the arbitration  
14 Q Depending on what it says, is that your  
15 testimony?  
16 MR MEZA Object to the form  
17 A Well I mean as an initial matter, we  
18 don't agree with your position on 2-5 So  
19 if we end up losing Issue 2-5 and that  
20 becomes a transition period and it's  
21 agreed upon and we're not appealing it or  
22 there's not any other further activity to  
23 change it, then that would be what would  
24 be in the parties' agreement  
25 So I guess -- undoing my previous

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1 answer I guess we would comply with  
2 whatever was in the parties' agreement  
3 that -- if it was ordered or arbitrated.  
4 it was the final decision  
5 Q Can you please look at Exhibit 3, which is  
6 your November 19th testimony, please?  
7 A I'm sorry, which one?  
8 Q November 19th testimony page 8  
9 MR MEZA Flipping again  
10 A Page 8 Oh, Exhibit 3 I'm sorry you  
11 said page 8?  
12 Q Yeah, I did  
13 A Okay I'm with you Okay  
14 Q What do you mean in lines 16 to 17 when  
15 you say that BellSouth would have no  
16 obligation to continue to provide the  
17 vacated elements?  
18 A If the requirement to unbundle an element  
19 goes away and -- this issue is talking  
20 about the situation where the Interim  
21 Rules Order put it back in for the interim  
22 period and the transition period and if  
23 something takes it back away, it's not  
24 there any more So we would not have on  
25 obligation to provide it as an unbundled

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1 network element  
2 Q So if the Interim Rules Order is vacated,  
3 there would be no rules for unbundling  
4 transport or mass market switching or  
5 enterprise loops, is that your testimony?  
6 A If the intervening or the court decision  
7 impacted all three of those aspects of the  
8 Interim Rules Order, yes, there would not  
9 be an unbundling obligation pursuant to  
10 251 We may still have a 271 obligation  
11 which we'll fully comply with, but that  
12 does not pertain to TELRIC rates or 252(d)  
13 rates  
14 Q If the Interim Rules Order were vacated to  
15 all three of those UNEs --  
16 A Uh-huh  
17 Q -- but there were interconnection  
18 agreements still in effect that provided  
19 for all of those UNEs still would  
20 BellSouth operate pursuant to that  
21 interconnection agreement?  
22 A We would always operate pursuant to our  
23 interconnection agreement The intent of  
24 this issue is to get language in there  
25 that puts it in there -- or addresses the

29 (Pages 113 to 116)

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1 aspect should there be a court decision  
2 that invalidates that that we'd  
3 automatically incorporate that language  
4 into the agreement I mean, if there's an  
5 existing agreement out there and it's got  
6 whatever language in it, we're going to  
7 comply with that language

8 The intent of this issue between  
9 the parties' arbitration is to address  
10 you know what happens in that scenario  
11 If there is a court decision that vacates  
12 the Interim Rules Order, we have no  
13 obligation to provide those vacated  
14 elements any more Those elements are  
15 vacated, they're gone away We don't have  
16 to offer them even in the interim period  
17 or the transition period

18 So in that context of what  
19 language needs to go in the agreement, if  
20 we put language in there that says, should  
21 this happen should a court vacate the  
22 Interim Rules Order, then we will  
23 transition you off of those vacated  
24 consistent with Item 2-5 Issue 23

25 Q Absent the amendment that you just

1 Q You don't know what would happen?

2 A I -- Well I mean, if we didn't get this  
3 language in here and we didn't have  
4 language that said this happens, we'd  
5 invoke change a law, would be my

6 Q The change of law in the existing  
7 interconnection agreements?

8 A Whatever agreement this language didn't  
9 get into that you're pursuing

10 Q Let me turn back to Exhibit 2 your  
11 November 12 testimony, please, at page  
12 18 At lines 16 and through the end of  
13 the page, you're discussing a Transition  
14 Period, capital T capital P

15 A Yes

16 Q Can you tell me what are the dates in  
17 your understanding, of that period?

18 A Transition Period, as I understand it set  
19 forth in Interim Rules Order, is the  
20 six-month period following the expiration  
21 of the interim period that was set forth  
22 in the Interim Rules Order, which ends  
23 March the 12th or in the event the FCC  
24 issues final unbundling rules That would  
25 be the Transition Period It's either

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1 described should the Interim Rules Order  
2 be vacated, et cetera?

3 If the Interim Rules Order were  
4 vacated and an effective interconnection  
5 agreement provided for unbundled access to  
6 mass market switching, enterprise loops,  
7 and dedicated transport would BellSouth  
8 still be obligated to provide those three  
9 elements?

10 A We would be obligated pursuant to the  
11 terms of that agreement and in the terms  
12 of whatever change of law provisions are  
13 in there to change that existing  
14 agreement But the intent of this issue  
15 is to get language in the agreement that  
16 we're arbitrating now that makes it happen  
17 should the scenario come into play

18 Q What if no language is arrived at to that  
19 effect?

20 A Well in actuality, it may be a moot point  
21 because when the final rules come out it  
22 won't matter what the interim rules are  
23 so I can't speculate if that happened I  
24 don't know I mean that will be months  
25 down the road I don't --

1 March 12th or whenever they issue -- or if  
2 they issue final unbundling rules earlier  
3 than March 12th okay

4 Q Okay

5 A So on March 12 --

6 Q Or whenever the unbundling rulings come  
7 out?

8 A Right And again if the -- the final  
9 unbundling rules could set forth its own  
10 Transition Period final Transition  
11 Period capital T capital P, Transition  
12 Period that would override the Interim  
13 Rules Order Transition Period So it's  
14 from March 12th for the next six months  
15 would be the capital T capital P  
16 Transition Period

17 Q And in this paragraph that begins at line  
18 16 on page 18 --

19 A Yep

20 Q -- can you characterize what this language  
21 provides, what it explains?

22 A The intent of this language is to  
23 effectuate what the Interim Rules set  
24 forth -- Interim Rules Order set forth  
25 that they had an initial phase of six

30 (Pages 117 to 120)



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1 months, which is termed the Interim Rules  
2 Period -- interim period excuse me and  
3 then the second six-month post-March 12th  
4 or earlier of unbundling rules the next  
5 six months And during the final -- once  
6 we're in that capital T capital P  
7 Transition Period, the Interim Rules Order  
8 sets forth how vacated elements, assuming  
9 there's not a final unbundling rule, would  
10 be provided They could -- would be  
11 provided on -- to an existing imbedded  
12 base elements with a slight increase and  
13 no new vacated elements could be ordered  
14 after or during the transition period  
15 Q Is it fair to say this is a summary of  
16 your read of the Interim Rules Order?  
17 A Yes exactly That's in paragraph 129  
18 Q Is this what BellSouth is committed to do  
19 during the transition period?  
20 A In the absence of final unbundling rules,  
21 yes  
22 Q I'm sorry, I thought you said the  
23 Transition Period begins when the final  
24 unbundling rules are issued?  
25 A It would, unless superseded by a different

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1 Transition Period that may be set forth in  
2 the final unbundling rules I mean, this  
3 Transition Period, as defined in the  
4 Interim Rules Order it's the earlier of  
5 or March 12th earlier of final rules or  
6 March 12  
7 If the final rules come out and  
8 they don't address Transition Period, then  
9 we would start the transition -- capital  
10 T capital P, Transition Period from the  
11 date of the final rules to six months  
12 Q I understand At page 19 of this same  
13 testimony lines 19 to 20, you say that if  
14 the Transition Period is not automatically  
15 incorporated into the agreement, it would  
16 effectively prohibit the parties from  
17 operating under the Transition Period Is  
18 that a fair characterization of your  
19 testimony?  
20 A Yeah That's what it says yeah  
21 Q What do you mean by effectively prohibit  
22 the parties from operating under the  
23 Transition Period?  
24 A Well given that the Transition Period is  
25 a six-month window if we have to start

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1 negotiations to figure out what a  
2 Transition Period is in all likelihood it  
3 will be beyond six months before we even  
4 get to that point So in that interim  
5 period that we're not operating under a  
6 Transition Period our opinion is you --  
7 after March 12th without a Transition  
8 Period, you wouldn't be able to get any of  
9 the vacated elements, even under the  
10 transition process  
11 Q Under any circumstances?  
12 A You would be able to get them if we  
13 implemented the Interim Rules Order  
14 Transition Period Automatically it sets  
15 forth conditions of which you can order  
16 vacated elements and under what rates  
17 But if there's not a Transition  
18 Period the interim period ends, then the  
19 vacated elements go away The interim  
20 period is over for which we had to remain  
21 them frozen, if you will back to our  
22 frozen discussion So they're no longer  
23 frozen we're not obligated to provide  
24 them absent a Transition Period, they go  
25 away So the Transition Period to me is

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1 a -- it's a good thing for the CLECs  
2 Because without it I don't see an  
3 obligation we have to provide the vacated  
4 elements past it  
5 Q So unless the transition period is  
6 affirmatively adopted by the parties in  
7 this case after March 12th BellSouth  
8 will not have an obligation to provide  
9 Petitioners with mass market switching  
10 enterprise loops, or dedicated transport?  
11 MR MEZA Object to the form  
12 A I mean our understanding of the Interim  
13 Rules Order it's a two-phase transition  
14 period and that's what we're proposing  
15 here, to effectuate the second six-months  
16 transition period to comply with the  
17 Interim Rules Order that -- as it set  
18 forth that transition period  
19 So during that second six months  
20 new elements could not be -- new vacated  
21 elements could not be ordered, and those  
22 that we're currently providing during that  
23 six-month transition period would be  
24 provided at an increased -- higher rates,  
25 as set forth in the Interim Rules Order

31 (Pages 121 to 124)

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1 Q Would that be regardless of what is in the  
2 parties' existing agreements?  
3 A Well we're negotiating the parties'  
4 existing agreement This would be  
5 language we would want to have in there  
6 And, again we've proposed that we should  
7 continue to institute change of law on the  
8 Interim Rules I mean, we're not  
9 precluded from initiating change of law on  
10 the Interim Rules and get that into your  
11 current agreement So if your current  
12 agreement, not the one we're -- the new  
13 one, but the existing one has been amended  
14 to incorporate the Interim Rules Order  
15 then it would have a transition period in  
16 it  
17 Q And again if no -- if the language that  
18 BellSouth is suggesting just does not  
19 become an agreement, does not become  
20 incorporated into the agreement, what  
21 happens after March 12th as to mass market  
22 switching, enterprise loops, and dedicated  
23 transport?  
24 A We would begin effectuating a transition  
25 to comparable services, which is our

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1 transition plan in Issue 23 2-5 30 days  
2 to migrate off of the vacated elements  
3 Q Is it your position that the transition  
4 period that you discuss is a federal rule  
5 now?  
6 A It is included in the order I know the  
7 FCC asks for comments on whether -- about  
8 the transition period that should be in  
9 their final rules but I don't believe  
10 that negates the benefit of having a  
11 transition period in the agreement  
12 And I think that the Interim Rules  
13 Order clearly laid out the value of the  
14 transition period to stability in the  
15 market and to avoid -- avoid what could  
16 happen without one on March 12th or 30  
17 days thereafter  
18 Q But is the transition period a binding  
19 rule right now?  
20 A I think the Interim Rules Order is an  
21 order, and I don't know that I've seen any  
22 CFR or rules that came out of the Interim  
23 Rules as far as in the context of like the  
24 third report order and the first report  
25 order and all of those rules, but it is

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1 the Interim Rules Order so  
2 Q Are you familiar with the administrative  
3 law process that agencies go through?  
4 A No  
5 Q Do you know what the significance of a  
6 comment period is at the FCC?  
7 A Oh, like a notice of proposed rule making?  
8 Q Yes  
9 A Yes  
10 Q And what is the significance of a comment  
11 period?  
12 A It would be to obtain comments relative to  
13 what they're asking parties to comment on  
14 so they can develop their rules -- notice  
15 of proposed rule making They're making a  
16 rule, like the final unbundling rules  
17 They have a list of stuff they are seeking  
18 comments on from the parties relative to  
19 what those final rules should be based on  
20 the USTA II vacatur  
21 Q Is it your position that the final rules  
22 come after the comment period?  
23 A Yes  
24 Q Can you pick up Exhibit 4, which is the  
25 Interim Rules Order, and look at page 16'

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1 MR MEZA Page or paragraph 16'  
2 Q Page 16, because when you look at it,  
3 you'll see there's no paragraph number  
4 A Okay  
5 Q This is actually a continuation of  
6 paragraph 29, I think of the order  
7 A Right Uh-huh  
8 Q And you see there on the second bullet,  
9 which is labeled Transition Period --  
10 A Uh-huh  
11 Q -- about six lines down do you see where  
12 the FCC says, we propose the following  
13 requirements?  
14 A Uh-huh  
15 Q Do you think that is a notice of proposed  
16 rule making?  
17 A I think they're setting forth in this  
18 agreement the transition period that they  
19 think should be required, which would be  
20 designed to protect the incumbent LECs as  
21 well as regarding against precipitous rate  
22 increases  
23 Q Are they, in fact, requiring it?  
24 A I mean, throughout this order they  
25 support a transition process, a 12-month

32 (Pages 125 to 128)

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1 phase And it's from the first paragraph  
2 on to the -- throughout the whole  
3 document or order it sets forth -- I  
4 mean -- I mean again, it could be  
5 contrary to propose Over here they set  
6 forth a comprehensive plan consisting of  
7 two pages So I mean, there's I guess  
8 you could say, conflicting words whether  
9 they proposed it or they set it forth To  
10 me they're in support of it And for all  
11 the valid reasons they're in support of it  
12 is why we're attempting to put it into the  
13 agreement  
14 Q Are you aware of whether parties submitted  
15 comments regarding the Transition Period?  
16 A I'm not specifically aware of any details  
17 of any but I'm sure the parties --  
18 numerous parties, I'm sure, commented on  
19 it  
20 Q Did BellSouth comments on it to your  
21 knowledge?  
22 A I believe we filed comments, yes  
23 Q Where did you see -- You referenced the  
24 words, we set forth a two-phase plan  
25 What were you looking at?

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1 A Paragraph 1 at the third line from the  
2 bottom of that paragraph To that end, we  
3 set forth a comprehensive 12-month plan  
4 consisting of two phases to stabilize the  
5 market And that end being to not  
6 unnecessarily place the entire telecom  
7 market at risk  
8 Q All right Paragraph 1 continues on to  
9 paragraph 2 Do you see that on page 2?  
10 A Uh-huh  
11 Q And do you see where it says rates, terms,  
12 and conditions shall remain in place until  
13 the earlier of the effective date of final  
14 unbundling rules promulgated by the  
15 commission or six months after federal  
16 publication of this order?  
17 A Right  
18 Q Is that sentence describing effectively  
19 the Transition Period in your mind?  
20 A That's describing the initial period, the  
21 first six months Because during that  
22 first six months, it would remain in place  
23 or frozen unless superseded by negotiated  
24 agreement or intervening commission i.e.,  
25 FCC order or state order raising rates

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1 Q So the initial period shall remain in  
2 place, is what this means?  
3 A It says the rates, terms, and conditions  
4 shall remain in place But again, the  
5 previous context is talking about the  
6 12-month period The initial period is  
7 six months The Transition Period is the  
8 second six months That be sentence on  
9 the first page sets forth the 12-month  
10 plan And then --  
11 Q Do you know what it means for an agency to  
12 use the terms we adopt?  
13 A I mean, just the definition of adopt is  
14 accept or agree to or -- you know I  
15 guess what agency and in what context?  
16 That's my understanding of the term adopt  
17 would mean in the context of an order or  
18 decision  
19 Q Do you know whether those words have any  
20 legal significance in an administrative  
21 law sense?  
22 A No, I don't know  
23 Q Have you ever encountered a situation in  
24 which the FCC sought comment on rules that  
25 were final?

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1 A I don't know of anything specifically I  
2 don't know that there would be anything to  
3 preclude them from that I mean, final is  
4 a pretty strong word in the telecom  
5 industry  
6 Q Do you know what the Commission meant in  
7 paragraph 29 when they use the phrase,  
8 subject to the comments requested?  
9 A Can you point me to where you're looking  
10 at paragraph 29?  
11 Q Bottom of page 16, the end of bullet  
12 two --  
13 (INTERRUPTION )  
14 MR MEZA I'm sorry Let me take  
15 a two-minute break I have to take this  
16 call I'm sorry  
17 MS JOYCE Let's go off the  
18 record  
19 (SHORT RECESS )  
20 BY MS JOYCE  
21 Q Do you see on this page where it says,  
22 subject to the comments requested? Do you  
23 see that?  
24 A No, I don't  
25 Q Okay Are you on page 16 of this exhibit?

33 (Pages 129 to 132)

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1 A Yes I'm on page 16  
2 Q Last sentence of the big fat bullet.  
3 Transition Period  
4 A Okay Last full sentence with respect to  
5 all elements?  
6 Q Keep going  
7 A As during the interim period carriers  
8 shall remain free to negotiate?  
9 Q Keep going  
10 A Oh, it's on the top of my page 17  
11 Sorry Okay  
12 Q Repagination is the difference, okay  
13 A Yes I see that  
14 Q What do you think the Commission meant  
15 when it said, we intend to incorporate  
16 this second phase of the plan into our  
17 final rules?  
18 A It means that they're going to set forth  
19 a, capital P, capital T Transition Period  
20 in their final rules, similar to what they  
21 set forth here in the Interim Rules based  
22 on whatever comments they get from the  
23 parties  
24 Q Does that indicate to you that the  
25 Transition Period on this page 16 is final

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1 now?  
2 A We're interpreting it as such I mean,  
3 it's set forth in here It's -- Just  
4 because they seek comments on something  
5 that they're setting forth in this order  
6 doesn't mean it does away with -- my  
7 opinion, doesn't do away with what's in  
8 this order  
9 Q In this big bullet 2 on this exhibit  
10 labeled Transition Period, does the  
11 Commission state anywhere that we adopt  
12 anything?  
13 A I don't see those words here but again,  
14 they went to a lot of trouble to lay out  
15 their two-phase plan in this Interim Rules  
16 Order with details and what would apply  
17 when and even go beyond the  
18 post-Transition Period under the premise  
19 that if they never come out with final  
20 rules, these Interim Rules kick in  
21 Q How many notices of proposed rule makings  
22 of the Commission have you read?  
23 A I have no -- Just forever or --  
24 Q Yes  
25 A I have no clue I mean, I've had several

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1 different notices of proposed NPRMs over  
2 the past years -- over the past years  
3 Q Have you never seen an NPRM that sets  
4 forth a fairly specific plan that the FCC  
5 may intend to incorporate?  
6 A I can't say whether I have or haven't per  
7 se but, again, I think they're setting  
8 forth a plan within this Interim Rules  
9 Order that encompasses a 12-month period  
10 I mean, they said it basically in the  
11 first paragraph we set forth  
12 Q Are they adopting it?  
13 A Again I don't specifically know whether  
14 that word adopt is in here or not I  
15 still see it as an order that sets forth  
16 what it says in the body of the order  
17 Q Have you read any court decisions besides  
18 the USTA II case that review an order of a  
19 federal agency?  
20 A I'm sorry, can you say that, again?  
21 Q Have you ever read a court case other than  
22 USTA II that reviews an order of a federal  
23 agency?  
24 A I've read the Eighth Circuit regarding  
25 something in the past, and I read the

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1 supreme court about the combo --  
2 combinations, so those come to mind  
3 Q Do you know what the term standard of  
4 review means?  
5 A No  
6 Q Do you know what the term judiciary  
7 means?  
8 A No, I don't know that, either  
9 Q Do you know what the term jurisdictional  
10 means?  
11 MR MEZA Object to the form  
12 A Jurisdiction -- I mean we talked  
13 previously about what we believe the  
14 jurisdiction -- that term means But just  
15 from my layman's understanding of what  
16 that means that you have oversight or the  
17 ability to consider something under your  
18 purview  
19 Q If a federal appellate court made a  
20 statement that said this is a  
21 jurisdictional issue, would you know what  
22 that meant?  
23 MR MEZA Object to the form  
24 A No Again, I'm not an attorney Again,  
25 I'm interpreting or reading this order as

34 (Pages 133 to 136)

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1 it impacts BellSouth's ability to  
2 negotiate these issues  
3 Q All right And let me please refer you to  
4 page 20 of your November 12th testimony  
5 Exhibit 2 Bottom of page 20  
6 A Exhibit 2, page 20, okay  
7 Q Line 23 you use the term new vacated  
8 elements Do you see that?  
9 A Yes  
10 Q What's a new vacated element?  
11 A Well, the intent of a new vacated element  
12 was on March 13th -- 12th, I guess  
13 After March 12th the Interim Rules -- or  
14 the interim period no longer exists  
15 therefore, the Interim Rules Order goes  
16 away basically Those previous elements  
17 that were frozen are no longer frozen, so  
18 they're vacated So that -- the elements  
19 that the Interim Rules Order put back into  
20 play for this interim period after March  
21 12th go back to being vacated that USTA II  
22 set forth So that's new vacated as of  
23 March 12th  
24 Probably not a good use of the  
25 terms there, but it's intending they newly

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1 become vacated after March 12th  
2 Q Could this phrase also be worded newly  
3 vacated elements?  
4 A It could be, if -- I mean, in the context  
5 of final unbundling rules, they vacated  
6 additional things or did away with  
7 obligations to provide additional  
8 elements but this is in the context of  
9 the Interim Rules There's not a  
10 Transition Period and there's nothing in  
11 place to start March 13th with how we  
12 handle things, there's no final rules  
13 then what was vacated by USTA II comes  
14 into play because the interim period has  
15 ended  
16 Q And your understanding is that what was  
17 vacated by USTA II are mass market  
18 switching, enterprise loops and dedicated  
19 transport, is that right?  
20 A Well, as it pertains to what the Interim  
21 Rules Order froze and required us to  
22 continue to provide pursuant to the  
23 interim period  
24 Q So the frozen elements under the Interim  
25 Rules Order are mass market switching

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1 enterprise loops, and dedicated transport  
2 is that right?  
3 A As they were defined by the TRO and  
4 vacated by USTA II  
5 Q Are there vacated elements in USTA II that  
6 are not frozen?  
7 MR MEZA Object to the form  
8 A I can't think of any I think the Interim  
9 Rules Order pretty much addressed all the  
10 elements that USTA II vacated based on how  
11 they're defined in the TRO  
12 Q And you see here that -- lines 22 to 23,  
13 page 20  
14 A Uh-huh  
15 Q The Joint Petitioners will have no legal  
16 right to obtain new vacated elements after  
17 March 12th, 2005  
18 When you -- What does the verb,  
19 "obtain" mean there?  
20 A Continue to receive They've got --  
21 They're currently receiving them prior to  
22 March 12th After March 12th, in the  
23 absence of a Transition Period, they would  
24 not be able -- have the right to continue  
25 to obtain them as UNEs

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1 Q Would they be able to file -- or, rather,  
2 place new orders for vacated elements  
3 after March 12th?  
4 A Not as UNEs If we had an agreement or  
5 they were ordering as a tariff service or  
6 comparable service, I mean, they can do  
7 that at any time but this is in the  
8 context of the Interim Rules Order and  
9 what was vacated  
10 Q Would they be able to continue using  
11 vacated elements as UNEs after March 12th,  
12 2005?  
13 A Again, we'd incorporate the transition  
14 plan that we discussed under Issue 23' 2-5  
15 to migrate off of the migrated element  
16 You are no longer obligated to provide you  
17 an element that you're currently  
18 receiving Our proposal would be to  
19 transition you to a comparable service, be  
20 it resale tariff, commercial agreement  
21 And that transition plan  
22 incorporates a 30-day window to migrate  
23 off of those elements that we're no longer  
24 obligated to provide as UNEs  
25 Q So is it your testimony that if the

35 (Pages 137 to 140)

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<p>1 agreement being arbitrated here doesn't 2 expressly incorporate the transition plan. 3 that on March 13th. Petitioners have to be 4 taken off of vacated UNEs? 5 A And to qualify that in the absence of 6 final unbundling rules. If there aren't 7 any final unbundling rules and there's no 8 provision for the next six months. 9 transition plan after March 12th then we 10 would have no obligation to continue to 11 provide those vacated elements as UNEs 12 We would transition in accordance with our 13 transition plan 14 Q In Issue 2-5? 15 A Yes 16 Q And also no new orders for such UNEs? 17 A Right 18 Q Do the Petitioners' interconnection 19 agreements as they stand today provide for 20 obtaining mass market switching as a UNE? 21 A I believe they still do. because they have 22 not mass market switching -- I believe 23 they still do. I'm not sure of the status 24 of all the various language in the current 25 agreement</p>	<p>1 none of the state commissions in the 2 BellSouth region issue an order deciding 3 the disputes in this arbitration by 4 March 12th, 2005? 5 A Well BellSouth is seeking change of law 6 provisions -- invoking change of law 7 provisions to incorporate the Interim 8 Rules Order into the current agreement 9 Q Presently with the Joint Petitioners -- 10 A Yes 11 Q -- BellSouth is doing that? 12 A Yes 13 So the inclusion of that with 14 those Interim Rules Orders would put the 15 Transition Period into the current 16 agreement by which the parties would 17 operate under 18 Q And is that change of law process a 19 negotiating process? 20 A It is pursuant to the provisions of the 21 current agreement that deals with change 22 of law 23 Q How does it work? 24 A I'm not specifically familiar with the 25 exact language in the Joint Petitioners'.</p>
Page 142	Page 144
<p>1 Q And do the Petitioners' current agreements 2 presently provide for them to obtain 3 enterprise loops as UNEs? 4 A I believe the current interconnection 5 agreement has not been updated or changed 6 to implement the TRO 7 Q And do those agreements also provide for 8 dedicated transport to be provided as 9 UNEs? 10 A Yes as it existed prior to the TRO and as 11 the agreement existed. it's forever -- 12 forever long it's been in place 13 Q What in your estimation would happen if 14 none of the state commissions in the 15 BellSouth region issue a ruling on this 16 arbitration by March 12th? 17 MR MEZA Object to the form 18 A If there's no final unbundling rules then 19 BellSouth would effectuate a transition 20 plan or -- let me think about that Hang 21 on one second Okay 22 We're in the arbitration -- Can 23 you please state that again? I don't know 24 if it's a moot point or not 25 Q In your estimation, what would happen if</p>	<p>1 but generally there's a window of time for 2 either party to contact the other party to 3 invoke change of law and there's a period 4 of time for negotiations 5 And if the parties can't reach 6 agreement, then there's a window of time 7 for either party to go to a commission to 8 resolve the matter, hence, the petition we 9 filed to have a generic change of law 10 proceeding to address the entire change of 11 law process that's in process with 12 multiple CLECs, to do it all at one time 13 Q So those petitions for generic proceedings 14 began the change of law process, is that 15 correct? 16 A They didn't -- 17 MR MEZA Objection to the form 18 of the question 19 A I don't know if they began the change of 20 law I mean we initiated change of law 21 positions when the TRO came out We 22 initiated it when the USTA II came out. 23 and then additional aspects of it with the 24 Interim Rules Order 25 So by virtue of those processes</p>

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1	and the change of law provisions we filed	1	SIGNATURE:
2	a generic proceeding -- requested a	2	I Kathy Blake do hereby state under oath
3	generic proceeding in the states to	3	that I have read the above and foregoing
4	address all of those aspects of those	4	deposition in its entirety and that the
5	change of law provisions at one time as	5	same is a full true and correct
6	they pertain to the Interim Rules and the	6	transcript of my testimony
7	USTA II and the TRO	7	Signature is subject to corrections on
8	Q And one last question Ms Blake Does	8	attached errata sheet if any
9	BellSouth have an obligation to honor	9	
10	effective interconnection agreements?	10	Kathy Blake
11	A Certainly	11	State of
12	MS JOYCE I think we can close	12	County of
13	for today	13	
14	MR MEZA Okay	14	Sworn to and subscribed before me this
15	MS JOYCE Unless you have any	15	day of 20
16	questions	16	
17	MR MEZA I'll save them until	17	Notary Public
18	you're done	18	My commission expires
19	(THE DEPOSITION ADJOURNED AT 5 33 P M )	19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
Page 146		Page 148	
1	ERRATA SHEET	1	CERTIFICATE
2		2	State of North Carolina
3	Case name In the Matter of	3	County of Harrett
4		4	I Nicole Ball Fleming a notary public in
5	Joint Petition NewSouth	5	and for the State of North Carolina do
6	Communications for	6	hereby certify that there came before me
7	Arbitration with BellSouth	7	on the 7th day of December 2004 the
8		8	person herebefore named who was by me
9	Deponent Kathy Blake Volume I	9	duly sworn to testify to the truth and
10		10	nothing but the truth of his knowledge
11	Date	11	concerning the matters in controversy in
12		12	this cause that the witness was thereupon
13	PAGE LINE READS SHOULD READ	13	examined under oath, the examination
14	/ / /	14	reduced to typewriting by myself and the
15	/ / /	15	deposition is a true and accurate
16	/ / /	16	transcription of the testimony given by
17	/ / /	17	the witness
18	/ / /	18	I further certify that I am not counsel
19	/ / /	19	for nor in the employment of any of the
20	/ / /	20	parties to this action that I am not
21	/ / /	21	related by blood or marriage to any of the
22	/ / /	22	parties nor am I interested either
23	/ / /	23	directly or indirectly in the results of
24	/ / /	24	this action
25	/ / /	25	In witness whereof I have here to set my
			hand and affixed my official notarial
			seal this the 22nd day of December
			2004
			Nicole Ball Fleming
			Notary Public
			My commission expires 4/30/05

BEFORE THE  
NORTH CAROLINA UTILITIES COMMISSION

Docket No. E-772, Sub 8  
Docket No. E-213, Sub 5  
Docket No. E-262, Sub 3  
Docket No. E-224, Sub 6  
Docket No. E-1204, Sub 4

In the Matter of )  
 )  
Joint Petitioners BellSouth )  
Communications Corp., et al. for )  
Arbitration with BellSouth )  
Telecommunications, Inc. )

Raleigh, North Carolina  
Wednesday, December 8, 2004  
Deposition of KATHY BLAKE,  
VOLUME II

As witness herein, called for  
examination by counsel for the Joint  
Petitioners, in the above-entitled action,  
pursuant to Notice, the witness being duly  
sworn by Nicole Ball Fleming, Court  
Reporter and Notary Public in and for the  
State of North Carolina, taken at the  
offices of Parker Fox Adams & Bernstein,  
130 Fayetteville Street Hall, Suite 1400,  
Raleigh, North Carolina, beginning at 9:05  
a.m., on Wednesday, December 8, 2004, such  
proceedings being taken stenographically  
by Nicole Ball Fleming

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25	

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10 On behalf of BellSouth

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16 Atlanta GA 30375  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 STIPULATIONS

- 2 Prior to examination of the witness  
3 counsel for the parties stipulated and  
4 agreed as follows:  
5 1. Said deposition shall be taken for  
6 the purpose of discovery or for use as  
7 evidence in the above-entitled action or  
8 for both purposes, as permitted by the  
9 applicable rules of civil procedure.  
10 2. Any objections of any party hereto as  
11 to Notice of the taking of said deposition  
12 or as to the time and place thereof or as  
13 to the competency of the person before  
14 whom the same shall be taken are hereby  
15 waived.  
16 3. Objections to questions and motions to  
17 strike answers need not be made during the  
18 taking of this deposition, but may be made  
19 for the first time during the progress of  
20 the trial of this case, or at any pretrial  
21 hearing held before the Judge for the  
22 purpose of ruling thereon or at any other  
23 hearing of said case at which said  
24 deposition might be used, except that an  
25 objection as to the form of a question  
must be made at the time such question is  
asked or objection is waived as to the  
form of the question.  
4. That all formalities and requirements  
of the statute with respect to any  
formalities not herein expressly waived  
are hereby waived, especially including  
the right to move for the rejection of  
this deposition before trial for any  
irregularities in the taking of the same,  
either in whole or in part or for any  
other cause.  
5. That the scaled original transcript  
of this deposition shall be mailed  
first-class postage or hand delivered to  
the party taking the deposition or its  
attorney for preservation and delivery to  
the Court if and when necessary.



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1 KATHY BLAKE.  
2 having been duly sworn.  
3 testified as follows  
4 CONTINUED DIRECT EXAMINATION  
5 BY MS JOYCE  
6 Q Good morning. Ms Blake  
7 A Good morning  
8 Q You understand that you're still under  
9 oath?  
10 A Yes  
11 MS JOYCE As a preliminary  
12 matter. Mr Meza --  
13 MR MEZA Yes  
14 MS JOYCE -- the carrier  
15 notification letter that we discussed  
16 yesterday and I made a request for we  
17 found it  
18 MR MEZA Oh  
19 MS JOYCE So I'm withdrawing  
20 that request  
21 MR MEZA Okay  
22 MS JOYCE That makes things a  
23 little easier  
24 MR MEZA Yeah Sure  
25 MS JOYCE Let's go off the

1 is made available include these  
2 elements  
3 Are there any other elements  
4 that -- or services that must be made  
5 available when switching is made  
6 available?  
7 A There may be but this was all I could  
8 think of at the time I mean this -- it  
9 may not be limited to these but there may  
10 be others that are available with  
11 switching  
12 Q Do you know where an exhaustive list might  
13 be?  
14 A Not off the bat I would suspect the  
15 items that -- in my KKB-1 where we  
16 identified what would be removed as a  
17 result of the vacatur and the Interim  
18 Rules Order -- impact of the Interim  
19 Rules Order. you know. those items would  
20 be moved into that separate attachment  
21 that's referenced in KKB-1  
22 Q And KKB-1 is that the exhibit that's  
23 appended to your November 12th testimony?  
24 A Yes  
25 Q And it states that it's attachment to

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1 record  
2 (RECESS )  
3 BY MS JOYCE  
4 Q Ms Blake, I just want to ensure that you  
5 have the exhibits that you're going to  
6 need in front of you?  
7 A I have Exhibits 1 through 8  
8 Q All right Just to refresh your memory  
9 Exhibit 2 is your November 2nd testimony  
10 A November 12th  
11 Q November 12th And Exhibit 3 is your  
12 November 19th testimony  
13 A In Tennessee yes  
14 Q We'll be spending some time with both of  
15 those documents  
16 Please turn to page 22 of your  
17 November 12th testimony  
18 A Okay  
19 Q And this is testimony that regards Issue  
20 S-5  
21 A Yes  
22 Q At lines 10 to 12 you list some network  
23 elements. and you state at lines 8 to 9  
24 that examples of elements are services  
25 that must be made available when switching

1 network elements and other services  
2 11-8-04 draft?  
3 A Yes  
4 Q Do I have that right?  
5 A That is the label And I believe I  
6 attached just one particular of the  
7 company's -- one particular Attachment 2  
8 for one of the companies of the Joint  
9 Petitioners. NuVox  
10 Q I have NuVox is that --  
11 A Right That's what I -- There were  
12 different exact documents for KMC  
13 Xspedius. and NewSouth that were submitted  
14 to the parties  
15 Q Are there any other documents that would  
16 list the elements that must be made  
17 available when switching is made  
18 available?  
19 A Not that I'm aware of  
20 Q Further down the page on page 22. lines 16  
21 to 22 you discuss enterprise market  
22 loops Do you see that?  
23 A Yes  
24 Q And you state that it's defined as  
25 transmission facilities between a

2 (Pages 153 to 156)

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1 distribution frame or its equivalent in  
2 the ILEC central office and the loop  
3 demarcation point at an end-user customer  
4 premises at the DS-1 and DS-3 level.  
5 including dark fiber loops Do you see  
6 that?  
7 A Yes that is correct  
8 Q And you quoted a paragraph from the  
9 Triennial Review Order Does that  
10 represent that that paragraph is the  
11 source of the statement you make at lines  
12 17 to 19?  
13 A Yes That paragraph is probably one of  
14 the many paragraphs in the TRO where they  
15 reference the definition of loops --  
16 enterprise market loops  
17 Q Do you know the other paragraphs?  
18 A Not off the top of my head, no  
19 (DEPOSITION EXHIBIT NO 9 WAS MARKED )  
20 Q I'm handing you an exhibit labeled Exhibit  
21 9 Do you recognize this document?  
22 A It appears to be an excerpt from the  
23 Triennial Review Order released August  
24 21st  
25 Q And do you see that paragraph 249 is

1 other portions of the TRO that you just  
2 mentioned, you intended to incorporate  
3 them here?  
4 A Well, this was the basis for identifying  
5 the definition of a loop And then when  
6 you attach the qualifier of an enterprise  
7 to it it limits it to the DS-1 and above  
8 as opposed to a mass market which is  
9 below DS-1  
10 Q And that understanding is something you  
11 intended to incorporate in your testimony  
12 at lines 16 to 22?  
13 A Well I think it's subsumed by the  
14 definition of enterprise market loops, the  
15 reference back to 249 that defines the  
16 loop, what a loop is, an unbundled loop is  
17 pursuant to the TRO and the Remand  
18 Order --  
19 Q Do you see the word --  
20 A -- previous decision  
21 Q I'm sorry  
22 A I'm sorry  
23 Q Do you see the words DS-1 or DS-3 or dark  
24 fiber in paragraph 249?  
25 A No I said previously I did not But

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1 reproduced in this exhibit?  
2 A Yes I do  
3 Q Can you show me where in paragraph 249 you  
4 can find the notation of DS-1?  
5 (PAUSE )  
6 A I don't specifically see the term DS-1 in  
7 this paragraph It does reference back to  
8 the UNE Remand Order on the top of page  
9 152 would be encompassed in -- I mean,  
10 the enterprise definition is -- gets to  
11 the high speed as opposed to mass  
12 markets And this is referencing the  
13 definition of a loop When you attach the  
14 enterprise to it that's where it gets to  
15 the high-speed -- high-capacity DS-1 DS-3  
16 level  
17 Q What's the basis for your statement?  
18 A Well there's other parts within the TRO  
19 that discuss enterprise market and the  
20 mass market definitions as to what those  
21 are comprised of And then enterprise  
22 market would be the DS-1 and above Mass  
23 market would be below DS-1 or 4 or  
24 more -- less than 4 DSL equivalent  
25 Q And is -- your understanding regarding the

1 again, it's by an extension of the word  
2 enterprise and other parts of the order  
3 that define enterprise as the  
4 high-capacity levels  
5 Q And you've testified that enterprise  
6 market loops were vacated by USTA II?  
7 A Yes I have And, again, that was  
8 acknowledged in the Interim Rules Order  
9 where the Commission presumed they were  
10 vacated as well  
11 Q Can you please pick up Exhibit 4 which is  
12 the Interim Rules Order?  
13 A Yes  
14 Q Where do you find the Commission's  
15 presumption that enterprise market loops  
16 were vacated?  
17 A In footnote 4 -- In the last sentence in  
18 footnote 4 on page 2  
19 Q Is that the line that states we do not  
20 take a position on that question here, but  
21 to ensure a smooth transition governed by  
22 clear requirements, we assume, arguendo  
23 that the DC Circuit vacated the  
24 Commission's enterprise market loop  
25 unbundling rules?

3 (Pages 157 to 160)

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1 A Yes that's the point I was referencing  
2 And there's another reference to it as  
3 well I believe in 23 or 16  
4 Yes paragraph 23 on page 13 right  
5 in the middle where it starts, further as  
6 described above, while we require  
7 incumbents to continue providing the  
8 specific elements at the June 15th rates  
9 terms and conditions, we do not prohibit  
10 incumbents from initiating change of law  
11 proceedings that presume the absence of  
12 unbundling requirements for switching,  
13 enterprise market loops, and dedicated  
14 transport so long as they reflect the  
15 transition regime set forth above  
16 Q So in that line that you've just read, who  
17 would be presuming the absence of  
18 unbundling requirements?  
19 A Well it appears the FCC has presumed the  
20 absence of unbundling requirement, and  
21 then their instructions are not  
22 prohibiting us from pursuing change of law  
23 relative to the Interim Rules or the  
24 presumption of no unbundling requirements  
25 upon release of final rules

1 are vacated along with switching and  
2 dedicated transport  
3 Q Is it BellSouth's position that the FCC  
4 has held that enterprise market loops were  
5 vacated by the DC Circuit?  
6 A Yes  
7 Q Absent the discussion of enterprise loops  
8 in the Interim Rules Order do you know  
9 whether BellSouth would have provided  
10 enterprise loops?  
11 MR MEZA Object to form  
12 A I mean we had that -- it's my  
13 understanding we had that interpretation  
14 of the USTA II vacatur of enterprise  
15 market loop before the Interim Rules Order  
16 came out So the answer to that question  
17 is yes  
18 Q And returning to paragraph 23 from which  
19 you read  
20 A Uh-huh  
21 Q Do you agree that the sentence that you  
22 read regards incumbents initiating change  
23 of law proceedings?  
24 A Yes I mean we do not prohibit  
25 incumbents from initiating change of law

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1 Q All right Let's go back to footnote 4  
2 A All right  
3 Q Maybe if we start there Do you know what  
4 it means to assume arguendo?  
5 A I'm not exactly sure what arguendo --  
6 other than probably the parts of the --  
7 assumed for argument's sake  
8 Q Do you think that to assume something for  
9 argument's sake is to take a position on  
10 that issue?  
11 A Well, this whole order is an interim order  
12 to address the USTA II vacatur of the  
13 TRO's order, those elements that were  
14 vacated Again, in their final rules,  
15 they are going to be looking at the whole  
16 impairment analysis and determining what  
17 obligations BellSouth has to unbundle  
18 pursuant to 251  
19 So for the intent of implementing  
20 and interpreting this Interim Rules Order,  
21 we're basing our interpretation as well as  
22 the USTA II decision that the clear  
23 direction seems to be, going forward,  
24 assume, take the position, based on their  
25 wording here, that enterprise market loops

1 proceedings  
2 Q And it further says that, in those  
3 proceedings, they may presume the absence  
4 of unbundling requirements Do you see  
5 that?  
6 A Yes  
7 Q Do you equate this sentence with an FCC  
8 pronouncement that enterprise market loops  
9 were vacated?  
10 A I take it for the intent of this Interim  
11 Rules Order they're taking the position --  
12 or presumption that they are vacated, and  
13 then we're -- in the effort to implement  
14 this Interim Rules Order and effectuated  
15 in the agreements we're following that  
16 same presumption along with our position  
17 relative to USTA II  
18 Q All right This morning you pointed me to  
19 two parts of this Interim Rules Order upon  
20 which you rely for the statement that the  
21 FCC presumed the vacatur of enterprise  
22 market loops, is that right?  
23 A Paragraph 23 and footnote 4, yes  
24 Q Is there any other part?  
25 A There may be, but I would -- there may

4 (Pages 161 to 164)

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1 have been some reference to what we  
2 discussed above or some terms that may  
3 have -- may be in here again I'd have  
4 to read it probably from cover to cover --  
5 Q All right And you agree --  
6 A -- to what those --  
7 Q And you agree that footnote 4 includes the  
8 words we assume, arguendo that the DC  
9 Circuit vacated the Commission's  
10 enterprise market loop unbundling rules?  
11 A Yes that's what it says  
12 Q And in paragraph 23 we agree that the  
13 sentence that you read regards incumbents  
14 initiating change of law proceedings?  
15 A Yes in the context of implementing the  
16 Interim Rules Order and what is expected  
17 to come out of the final rules  
18 Q And from those two portions of the order  
19 you derive that the FCC believes that  
20 enterprise market loops were vacated?  
21 A I mean, that contributed to the whole  
22 understanding of how we're implementing  
23 the Interim Rules Order And I'm not --  
24 Q Whose understanding?  
25 A BellSouth's understanding of how we're

1 can do in the meantime effectuating change  
2 of law in anticipation of the final  
3 rules  
4 And based on their presumption,  
5 that for going forward -- you know for  
6 arguendo purposes, whatever for going  
7 forward they presume they were vacated  
8 and that's the same position we are taking  
9 in the context with our position on the  
10 USTA II  
11 Q Is it your position that the fact that  
12 enterprise market loops are part of this  
13 Interim Rules Order demonstrates that the  
14 FCC believes that enterprise market loops  
15 were vacated?  
16 A I think the Interim Rules Order speaks for  
17 itself, what it says here as far as what  
18 they assumed or presumed and what they  
19 ruled here in this Interim Rules Order  
20 You know coupled with these two  
21 cites that we've been discussing, along  
22 with the entire order, along with the USTA  
23 II decision, the position that was taken,  
24 that is how we're attempting to proceed in  
25 getting the language into this agreement

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1 going to implement and effectuate it in  
2 this agreement that we're working on now  
3 the change of law and how the -- the  
4 current agreement needs to be amended or  
5 what language needs to be in here to  
6 accommodate the final unbundling rules  
7 Q And that -- that BellSouth understanding  
8 is derived from the two portions of the  
9 order that you've identified today?  
10 A Those two portions in the context of the  
11 entire order I mean it's an entire  
12 order that we're implementing Change of  
13 law is going to impact the mass market,  
14 it's going to impact the dedicated trans  
15 -- I mean, the switching and the  
16 dedicated transport and that is just one  
17 of the three parts that is addressed in  
18 the Interim Rules Order relative to the  
19 vacated elements from USTA II  
20 Q And what do you mean by, in the context of  
21 the whole Interim Rules Order?  
22 A Well, I mean, we're reading the  
23 requirements set forth in the Interim  
24 Rules Order talking about what has to be  
25 frozen, how you effectuate that, what you

1 and you know, effectuating what elements  
2 are frozen, and terms and conditions  
3 predicated -- or prompted the, you know,  
4 production of attachment -- my Exhibit  
5 KKB-1 that shows what elements need to be,  
6 you know, frozen or moved into a  
7 subsequent attachment just the whole  
8 implementation of this for when the final  
9 rules come out  
10 Q Is it BellSouth's position that the  
11 entirety of federal unbundling rules in  
12 the post-USTA II environment to date is  
13 recorded in this document before you?  
14 MR MEZA Object to the form  
15 A No  
16 Q And so BellSouth's position essentially is  
17 that anything in this order that has been  
18 frozen equates to a vacated element?  
19 MR MEZA Object to the form  
20 A BellSouth's position is that this Interim  
21 Rules Order addressed those portions of  
22 the TRO that were vacated by USTA II and  
23 how to -- what to do with those in this  
24 interim period until they come up --  
25 until the FCC comes up with final rules

5 (Pages 165 to 168)

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1 And what we've done is taken this  
2 Interim Rules Order, put it into language  
3 and practice to comply with what this  
4 order allows us to do

5 Q Okay I feel like there's a lot going on  
6 in your answer right there, but I'm just  
7 trying to understand. While the document  
8 may speak for itself, I'm entitled to know  
9 BellSouth's interpretation of that  
10 language

11 MR MEZA She's given it to you  
12 repeatedly, and you know, we're going  
13 around in circles here. She's given you  
14 the answer six and seven times now

15 MS JOYCE Is that a speaking  
16 objection?

17 MR MEZA You can construe it the  
18 way it is. I'm telling you what's  
19 happened in the last 20 minutes or so,  
20 so

21 Q So from the two portions of the order that  
22 you and I discussed and the general  
23 context of order, BellSouth has construed  
24 that enterprise market loops are vacated?

25 MR MEZA Object to the form

1 those included in Petitioners' agreements?

2 A I'm sure they would be, yes

3 Q What would render the agreements TRO  
4 compliant?

5 A Effectuating an amendment that  
6 incorporates the non-vacated elements of  
7 the TRO into the agreement

8 Q Are mass market switching, dedicated  
9 transport and enterprise market loops  
10 vacated elements?

11 A They are vacated, but that would be  
12 pursuant to the USTA II and the Interim  
13 Rules Order. The TRO came out before the  
14 USTA II came out. And there were  
15 provisions in there that eliminated things  
16 that have not been vacated, like OCN level  
17 transmission, fiber-to-the-curb has been  
18 subsequently decided, entrance facilities  
19 were removed from the TRO as a requirement  
20 as part of dedicated transport. They were  
21 not vacated, so that -- that part of the  
22 TRO was not vacated, therefore, that  
23 definition of dedicated transport absent  
24 the requirement to provide entrance  
25 facilities still stands, and that would be

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1 A Those that you just said along with our  
2 reading of USTA II

3 Q And is it your position that dark fiber  
4 enterprise loops are included in the  
5 vacatur?

6 A Yes

7 Q And is that also derived from your reading  
8 of USTA II and the Interim Rules Order?

9 A Yes

10 Q And would that be the same portions of the  
11 Interim Rules Order that you and I just  
12 discussed, footnote 4 in paragraph 23?

13 A Yes, again, coupled in the context of the  
14 entire order along with USTA II

15 Q And I believe you've testified that the  
16 Petitioners in this arbitration presently  
17 operate under agreements that include  
18 provisions for mass market switching  
19 enterprise market loops and dedicated  
20 transport, is that correct?

21 A I believe that's currently in their  
22 agreement. It's my understanding they  
23 have not been modified to be TRO compliant  
24 to remove those aspects that were vacated

25 Q And the rates for those elements, are

1 just one example of something that would  
2 need to be amended into the agreement, to  
3 remove entrance facilities, OCN level  
4 transmissions from the definition of  
5 dedicated transport

6 Q So your testimony at page 23 of your  
7 November 12th testimony --

8 A I'm sorry, 23?

9 Q Yes

10 A Page 23?

11 Q Page 23

12 A Okay

13 Q Lines 10 to 15. Does this testimony  
14 reflect your position that Petitioners'  
15 existing agreements should be amended to  
16 comply with the portions of the TRO that  
17 were not vacated?

18 A It needs to be amended to be compliant  
19 with the TRO and the subsequent decisions  
20 and the Interim Rules Order that came out  
21 subsequent to that. I mean, that's the  
22 intent, is to get the agreement compliant  
23 with the current state of the law. The  
24 law is TRO, USTA II, Interim Rules Order,  
25 and hopefully soon the final unbundling

6 (Pages 169 to 172)

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1 rules So because all these things have  
2 transpired since last September up till  
3 August, post-August then soon, in the  
4 next couple of weeks the law has  
5 continued to change  
6 Q All right I'm looking at lines 10 to 15  
7 A Uh-huh  
8 Q Can you show me where it indicates that  
9 the agreements should be modified to  
10 comply with the Interim Rules Order?  
11 A Well that's the whole gist of this  
12 arbitration that we're in now, the  
13 supplement -- subsequent -- supplemental  
14 issues we've raised are in that vein, to  
15 get the new agreement compliant with the  
16 Interim Rules Order, and I believe we're  
17 pursuing change of law provisions with  
18 you -- with the Joint Petitioners  
19 currently outside of this to modify your  
20 current agreement to be compliant  
21 This addresses the TRO aspect of  
22 it and the fact that the current  
23 agreement -- the definitions in the  
24 current agreement for these elements is  
25 not even TRO compliant

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1 Q So in addition to the TRO, BellSouth's  
2 intention is to have the agreements be  
3 compliant with USTA II and the Interim  
4 Rules Order?  
5 A Correct  
6 MR MEZA Object to form  
7 Q And you would agree that there are  
8 portions of the TRO that were not  
9 vacated?  
10 A Yes  
11 Q And where did you derive your  
12 understanding of which elements were not  
13 vacated?  
14 A Well in a read of USTA II it defined  
15 what elements they were vacating The  
16 Interim Rules Order set forth how those  
17 vacated elements would be handled in an  
18 interim period and did not impact those  
19 non-vacated elements So anything that  
20 was not vacated by USTA II that still  
21 stands in the original TRO, such as  
22 entrance facilities OCN level  
23 transmission, fiber-to-the-curb,  
24 fiber-to-the-home, those aspects were not  
25 vacated by USTA II they still remain as

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1 they were decided in the TRO  
2 Q Ms Blake, do you have a copy of Black's  
3 Law Dictionary in your office?  
4 A There's one down the hall I don't have  
5 one specifically in my office, no  
6 Q How often do you go look up definitions in  
7 Black's Law Dictionary?  
8 A Not very often  
9 Q Can you please turn to your Exhibit 3,  
10 November 19th testimony  
11 A Uh-huh What page?  
12 Q Page 17 note 4  
13 A Uh-huh  
14 Q Here I believe you're quoting from Black's  
15 Law Dictionary, the 2000 edition for the  
16 definition of progeny?  
17 A Yes  
18 Q Why did you include that in this  
19 testimony?  
20 A It's included here to point out the -- in  
21 relation to where it's referenced and to  
22 the question of the -- on the previous  
23 page that the Joint Petitioners assert  
24 that we can't amend their current contract  
25 to implement the Interim Rules Order that

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1 them contending that was part of the  
2 agreement, based on my understanding of  
3 the Joint Petitioners' reading of the term  
4 USTA II and its progeny  
5 It appeared to me that the Joint  
6 Petitioners were considering the Interim  
7 Rules Order as progeny of USTA II, which  
8 it is not, based on my understanding of  
9 progeny So just trying to clear up the  
10 difference between the use of that USTA II  
11 and progeny with the other aspects of the  
12 90-day abatement period  
13 Q Is your entire understanding of the word  
14 progeny derived from this Black's Law  
15 Dictionary definition?  
16 MR MEZA Object to the form  
17 A Yes pretty much  
18 Q Why is the Interim Rules Order relevant to  
19 this arbitration?  
20 MR MEZA Object to the form  
21 A Well the initial matter like we  
22 discussed yesterday, the parties agreed to  
23 incorporate the impact of the Interim  
24 Rules Order into supplemental issues in  
25 this arbitration

7 (Pages 173 to 176)

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1 Q Do you know what the word "relevant" means  
2 in my question?  
3 MR MEZA Object to the form  
4 A Maybe you can answer -- I mean no I  
5 mean I -- restate your question. I  
6 guess I'm not sure what you  
7 Q I'll restate the question then as why is  
8 the Interim Rules Order part of this  
9 arbitration?  
10 A Because the parties agreed outside the  
11 agreement from the 90-day abatement to  
12 incorporate the Interim Rules Order into  
13 this arbitration for the new agreement  
14 Q Does the Interim Rules Order implement any  
15 decisions of a court or another agency?  
16 MR MEZA Object to the form  
17 A No It defines a process for an interim  
18 period of time of how to handle -- how to  
19 proceed or how to operate, how the parties  
20 should interact during this interim period  
21 until they issue final rules so there's  
22 not destabilization and so the market  
23 isn't in a more state of flux  
24 Q Could you look at your Exhibit 4 on the  
25 front page It's the Interim Rules

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1 Order  
2 A Uh-huh  
3 Q Paragraph one  
4 A Uh-huh  
5 Q The Commission states they are issuing a  
6 notice of proposed rule making -- and I'm  
7 paraphrasing -- that will implement the  
8 obligations of section 251(c)(3) of the  
9 Communications Act in a manner consistent  
10 with the US Court of Appeals for the DC --  
11 the District of Columbia Circuit decision  
12 in United States Telecom Association  
13 versus FCC Do you see that?  
14 A Uh-huh  
15 Q So would you agree that this order was  
16 released in order to comply with the DC  
17 Circuit decision in the USTA II the case  
18 stated there?  
19 A No I wouldn't I mean I see this as  
20 Interim Rules Order of how we operate  
21 until they come out with the final rules  
22 You know, again, I think the abatement  
23 agreement speaks for itself, and, again,  
24 I'm not an attorney The intent of doing  
25 the abatement was to make sure we had an

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1 USTA II-compliant agreement And getting  
2 there was the goal during the abatement  
3 And we agreed on additional supplemental  
4 issues and then agreed to include the  
5 Interim Rules Order in those supplemental  
6 issues and how they would be addressed  
7 going forward in the new agreement  
8 It didn't preclude us from, you  
9 know pursuing change of law on the Interim  
10 Rules Order or the -- ultimately -- the  
11 Interim Rules Order I mean, it didn't  
12 exist when we did the abatement  
13 Q Is it BellSouth's position that the FCC  
14 has not taken steps to comply with the  
15 vacatur and the USTA II decision?  
16 MR MEZA Object to form  
17 A The USTA II vacated and remanded stuff  
18 back to the FCC to do it right, hopefully  
19 and the outcome will hopefully be included  
20 in the final unbundling rules The FCC,  
21 in essence, in my opinion, issued the  
22 Interim Rules in order to -- for all the  
23 reasons they state in here Maintain  
24 stability not have, you know shock to  
25 the market if we stop taking -- you know

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1 if we no longer -- we interpret it that  
2 there are no longer unbundling rules in  
3 this interim period and just kind of  
4 maintain kind of the status quo  
5 Q Is it BellSouth's position that the  
6 Interim Rules Order is not any part of the  
7 FCC's effort to comply with USTA II?  
8 MR MEZA Object to form  
9 A I mean USTA II in my opinion, dictated  
10 to the FCC to redo what you did in parts  
11 of the TRO, and how the FCC is determining  
12 to accommodate that or comply with that  
13 would be in my opinion, what they'll  
14 issue in the final unbundling rules  
15 Again I think the Interim Rules were how  
16 to operate until they do that  
17 MS JOYCE Could my read that  
18 question back?  
19 (THE COURT REPORTER READ BACK THE  
20 REQUESTED PORTION OF THE RECORD )  
21 A Well, going back to -- to -- I think in  
22 an effort to answer that question, when  
23 you look at the additional parts of this  
24 first paragraph you've referenced to, the  
25 notice of proposed rule making is their

8 (Pages 177 to 180)

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1 effort to solicit comments so that they  
2 can comply with USTA II so the FCC can  
3 comply with USTA II when they ultimately  
4 issue their final rules

5 The order which is the Interim  
6 Rules Order part that addresses what we do  
7 in this interim period until they come out  
8 with final rules. is designed to avoid  
9 interruption in the telecom market while  
10 these new rules are being written So the  
11 Interim Rules Order portion about what's  
12 vacated, what's frozen, and how they're  
13 going to handle vacated elements and terms  
14 and conditions that whole part of it is  
15 for the whole stability of the market  
16 The notice of proposed rule making portion  
17 of this, of course, is for them to seek  
18 comments so that they can do it right in  
19 the final rules order

20 Q What are they seeking comments on?

21 A Just the different impairment, and how the  
22 impairment standards should be A whole  
23 section back here I don't have every  
24 item on here What the transition process  
25 should be distinction between qualifying

1 And is your testimony that these  
2 issues are some of the things that are  
3 open for comment?

4 A Yes based on the inclusion of them, and  
5 they may expand them more individually  
6 below that

7 Q And BellSouth's position is that the  
8 Interim Rules Order freezes some elements,  
9 is that right?

10 A The ordering section of -- The order  
11 section of this Interim Rules Order.  
12 starting at paragraph 16 sets forth.  
13 therefore the process for what is  
14 considered frozen and how something  
15 that -- how it could be modified  
16 after -- like the intervening order or a  
17 state commission order raising rates or  
18 voluntarily negotiated agreements beyond  
19 what was in place June 15th

20 Q Did the FCC's freezing of those certain  
21 elements have anything to do with USTA  
22 II?

23 MR MEZA Object to the form

24 A I don't know that it had directly to do  
25 with USTA II I mean it -- it's -- it

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1 and nonqualifying, basically paragraph 8,  
2 which identifies what they vacated and all  
3 the stuff that was delegated to the states  
4 for them to do the impairment analysis  
5 They have to redo that themselves, so

6 Q You're referring to paragraph 8?

7 A Yes

8 Q Where it says the USTA II court, inter  
9 alia, a-I-i-a vacated the Commission's  
10 delegation of authority to state  
11 commissions to engage in further granular  
12 impairment analysis?

13 A Uh-huh

14 Q Vacated the Commission's distinction  
15 between qualifying and nonqualifying  
16 services vacated and remanded the  
17 nationwide impairment findings from mass  
18 market switching and dedicated transport,  
19 and in the context of reviewing the  
20 Commission's finding on dedicated  
21 transport, vacated and remanded the  
22 failure by the Commission to consider  
23 alternative network access element  
24 arrangements, such as tariffed offerings  
25 offered by incumbent LECs

1 basically bought them time until they  
2 complied with USTA II in their final  
3 unbundling rules

4 Q What do you mean "bought them time"?

5 A Well, I mean they've set forth an interim  
6 period of how the parties -- how the  
7 industry should operate during -- until  
8 they comply with USTA II in their final  
9 unbundling rules, until they issue those  
10 rules that they were directed to redo by  
11 USTA II They basically just froze status  
12 quo, if you will for those vacated  
13 elements that were vacated by USTA II

14 Q And what is the effect of -- strike that  
15 Does BellSouth believe that the  
16 FCC does not think that compliance with  
17 USTA II should happen yet?

18 MR MEZA Object to the form

19 A Does BellSouth think that -- Can you ask  
20 that again? I'm sorry I lost you

21 Q Does BellSouth believe that the FCC does  
22 not think that compliance with USTA II  
23 should happen yet?

24 MR MEZA Object to the form

25 A I mean I think the FCC issued its Interim



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1 Rules Order for the reasons set forth in  
2 there in the Interim Rules Order. for  
3 stability and how to handle these issues  
4 -- these items that were vacated and that  
5 they would ultimately have final rules on  
6 so I don't think the FCC ever said don't  
7 comply with USTA II. I mean. I'm not sure  
8 I understand your question  
9 Q Does the parties' agreement in this  
10 arbitration regarding abatement regard  
11 implementation of the Interim Rules Order?  
12 A The specific 90-day abatement that was  
13 filed and the motion for the abatement  
14 does not address the Interim Rules Order  
15 because it was addressed -- it was issued  
16 after the motion was filed for the  
17 abatement. so it didn't come out until  
18 August and wasn't effective until  
19 September. So that was the reason for the  
20 subsequent agreement to include an Interim  
21 Rules Order in this arbitration  
22 Q There was a subsequent agreement?  
23 A Yes. it's my understanding. Whether it  
24 was formally -- We talked about it  
25 yesterday. Whether it was formally

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1 documented or just an e-mail agreement  
2 I'm not familiar with the form that it  
3 took  
4 Q And would you agree that the Interim Rules  
5 Order came later in time than the USTA II  
6 decision?  
7 A Yes. Absolutely. And, again, the intent  
8 of the abatement was to make sure we had a  
9 USTA II-compliant agreement, and I think  
10 there was some concern that we would  
11 contend that the Joint Petitioners  
12 couldn't maintain their current agreement  
13 and we wouldn't do anything to try and  
14 bump them off of their current agreement  
15 during that 90-day abatement period  
16 Q Okay. Could you please pick up Exhibit 8  
17 which is a copy of the joint motion to  
18 hold proceeding in abeyance  
19 A Uh-huh  
20 Q And turn to page 2  
21 A Uh-huh  
22 Q The middle paragraph --  
23 A Uh-huh  
24 Q -- states that, in light of these events  
25 the parties have agreed to propose a

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1 90-day abatement so that they can consider  
2 how the post-USTA II regulatory framework  
3 should be incorporated. Do you see that?  
4 A Yes  
5 Q Is it BellSouth's position that the  
6 Interim Rules Order is not part of the  
7 post-USTA II regulatory environment?  
8 MR MEZA. Object to form  
9 A My understanding of the intent of the  
10 terminology used in this letter or motion  
11 was that post-USTA II meant USTA II, and  
12 trying to get the agreement compliant with  
13 USTA II at this time and place. The  
14 Interim Rules Order hadn't even been  
15 released at this time this was written.  
16 So the intent of the world we lived in at  
17 the time this was done was USTA II.  
18 Q I believe my question was, does BellSouth  
19 believe that the Interim Rules Order is  
20 not part of the post-USTA II regulatory  
21 framework?  
22 MR MEZA. Object to form  
23 A Not as the context of this sentence is  
24 used in this letter, it does not.  
25 Q In any other sense, does BellSouth have an

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1 understanding derived from any other  
2 source that the Interim Rules Order is not  
3 included in the post-USTA II regulatory  
4 framework?  
5 MR MEZA. Same objection  
6 A Not that I'm aware of. The intent of this  
7 abatement was to address USTA II in the  
8 context of this motion, and post-USTA II  
9 regulatory framework at this juncture  
10 meant USTA II.  
11 Q Was the parties' sole intent at this time  
12 to perform the work that is memorialized  
13 in this joint motion?  
14 MR MEZA. Object to the form  
15 A We will do what is listed in this joint  
16 motion along with the other agreement to  
17 incorporate the Interim Rules Order in our  
18 going forward arbitration, but we're not  
19 precluded from pursuing change of law on  
20 the Interim Rules Order outside of -- I  
21 mean, we're not limited by this abatement  
22 from pursuing change of law to modify your  
23 current agreement -- the Joint  
24 Petitioners' current agreement to get it  
25 compliant with the Interim Rules Order

10 (Pages 185 to 188)

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1 You will still be operating under your  
2 current agreement just be amended to  
3 incorporate the Interim Rules Order  
4 Q Are those two operations the change of  
5 law and then this arbitration related?  
6 A They're related in the aspect that they  
7 both involve the Joint Petitioners their  
8 current agreement versus the new  
9 agreement  
10 Q Do they involve the same subject matter?  
11 MR MEZA Object to form  
12 A To some aspects, they would I mean the  
13 current agreement has all the old stuff it  
14 has in it The new agreement will be  
15 going forward, what needs to be the  
16 current law And our attempt is to get  
17 the current agreement -- the old agreement  
18 modified to be compliant with the current  
19 law as long as the parties are operating  
20 under the current agreement  
21 Q By "current law", do you mean current  
22 unbundling laws?  
23 A The current law as it sits today complying  
24 with the Interim Rules Order and USTA II.  
25 TRO

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1 Q So there are several components of current  
2 unbundling law?  
3 A Yes I mean we've got TRO, USTA II, and  
4 the Interim Rules Order and hopefully in  
5 the next week or so final unbundling  
6 rules  
7 Q And do you believe that the parties should  
8 comply with all of the current unbundling  
9 laws?  
10 MR MEZA Object to the form  
11 A It's BellSouth's intent for the agreements  
12 to be compliant with the law The purpose  
13 of the abatement as it relates to the  
14 current agreement was to ensure the Joint  
15 Petitioners that we weren't going to --  
16 during this period from the USTA II to  
17 whenever the final rules are, that we  
18 weren't going to stop providing stuff in  
19 your current agreement  
20 Q Do the parties need to comply with all of  
21 the current unbundling laws?  
22 MR MEZA Object to form  
23 A Yes, the parties need to be compliant with  
24 the law, either -- or whatever's  
25 established in their agreement if they

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1 agree otherwise, to do something outside  
2 the law  
3 Q And in the phrase post-USTA II, do you  
4 know what "post" signifies that word?  
5 A I mean it would happen after  
6 Q So the phrase post-USTA II means after  
7 USTA II?  
8 A In the context and my understanding of the  
9 intent of this agreement was to get the  
10 agreement to comply with USTA II to  
11 address USTA II  
12 Q Yes but my question was a lot more  
13 simple It's simply, does post-USTA II  
14 mean after USTA II?  
15 A I mean post-USTA II means USTA II  
16 happened and then we're effectuating what  
17 USTA II did, so  
18 Q You've testified that post means after?  
19 A Yeah post means -- you can look in the  
20 dictionary Yeah, post means after  
21 Q So post-USTA II means after USTA II?  
22 A Right, but in the context of USTA II, yes  
23 Q Given your understanding of what the word  
24 progeny means, as you used it in your  
25 November 19th testimony --

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1 A Uh-huh  
2 Q -- what, in your mind, is the difference  
3 between these two phrases Post-USTA II  
4 which is in the motion, and USTA II and  
5 its progeny?  
6 A Which is also in the motion Well, again,  
7 why different terms were used in this  
8 motion, I can't speak to because I didn't  
9 write it It was between the parties  
10 My understanding of the intent of  
11 this abatement was to address how USTA  
12 II -- how we need to operate under USTA  
13 II  
14 As far as, you know, post-USTA II  
15 versus USTA II and its progeny based on  
16 my definition, as I understand out of  
17 Black's Law progeny would be a subsequent  
18 order reaffirming or reholding what USTA  
19 II did The Interim Rules Order didn't do  
20 that  
21 Q The Interim Rules Order does not include  
22 an FCC opinion on what USTA II did?  
23 MR MEZA Object to the form  
24 A It's not my understanding that it  
25 reaffirms or restates, reholds that

11 (Pages 189 to 192)

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1 previous decision of USTA II. It just  
2 sets forth a process for how we will  
3 operate or what will happen in this  
4 interim period until they issue their  
5 final rules that would be compliant with  
6 USTA II.  
7 Q I think this morning you've testified that  
8 the -- BellSouth's position is that the  
9 FCC believes that enterprise market loops  
10 were vacated, isn't that correct?  
11 A Based on their statements, arguendo --  
12 presumed arguendo within the Interim Rules  
13 Order, they're making that presumption.  
14 Again, that will all be determined  
15 whatever they come out with in the final  
16 rules. But for purposes of how we operate  
17 or how the industry needs to function  
18 during this interim period, they treated  
19 enterprise market loops, mass market  
20 switching, and dedicated transport in that  
21 same vein, that those were vacated.  
22 Q Why do you believe that is the case?  
23 A Primarily the way I read footnote 4,  
24 paragraph 23.  
25 Q So I think -- just to close this loop, is

1 A Again, as I stated before, I mean the  
2 Interim Rules Order came after USTA II, so  
3 in the context of did the Interim Rules  
4 Order come after USTA II, yes, it came  
5 after. It was issued in August. USTA II  
6 came out in March. Obviously August is  
7 after March.  
8 But in the context of what the  
9 parties intended, my understanding of the  
10 intent of this agreement was to effectuate  
11 what USTA II did and impact that. The  
12 Interim Rules Order was not a part of  
13 that. It was not a decision reaffirming  
14 USTA II or reholding what USTA II found.  
15 Q Are you not able to answer the question as  
16 posed?  
17 MR MEZA: You know, I object to  
18 the condescending nature of your  
19 question. She's -- You've asked the  
20 question six times.  
21 MS JOYCE: And I haven't gotten  
22 an answer six times.  
23 MR MEZA: Yes, you did. Yes,  
24 she's answered you. She answered the  
25 question repeatedly.

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1 it BellSouth's position that the Interim  
2 Rules Order is not part of the post-USTA  
3 II regulatory framework?  
4 MR MEZA: Object to form.  
5 A As post-USTA II is used in the abatement  
6 letter, abatement motion, no, it is not.  
7 Q Under any understanding derived from any  
8 source, does it --  
9 MR MEZA: Object to form.  
10 A As a simple use of the term as after, did  
11 the Interim Rules Order come after USTA  
12 II, yes, it came after USTA II, but it in  
13 no way affirmed or reheld what USTA II  
14 did.  
15 Q But is the Interim Rules Order part of the  
16 post-USTA II regulatory framework?  
17 MR MEZA: Object. Objection.  
18 A Not in our understanding of the intent of  
19 using post-USTA II framework in this  
20 abatement here, what was agreed to between  
21 the parties.  
22 Q And under any other understanding that  
23 BellSouth has derived from any source?  
24 MR MEZA: Same -- Same.  
25 objection.

1 MS JOYCE: Let me just pose it  
2 one time. And it's phrased as a yes or no  
3 question, and I don't know is not an  
4 option.  
5 MR MEZA: I would appreciate you  
6 not, you know, suggesting that my witness  
7 is not understanding your questions, or a  
8 condescending attitude that you're now  
9 portraying to her in some of your  
10 questions. I don't think that's  
11 appropriate.  
12 MS JOYCE: I was just trying to  
13 understand if there's a miscommunication  
14 so that I can get an answer that I think  
15 is responsive. I in no way meant any  
16 disrespect to you or to your witness.  
17 MR MEZA: I appreciate that.  
18 MS JOYCE: I did not intend that  
19 in any way.  
20 MR HEITMANN: It seems the  
21 question keeps getting asked because each  
22 time it gets answered, it gets changed.  
23 MR MEZA: John, you're not  
24 allowed to speak on the record. I would  
25 appreciate it if you didn't. If you want

12 (Pages 193 to 196)

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1 to have an off-the-record conversation I  
2 would be free to do that  
3 MR HEITMANN Let's go off the  
4 record  
5 (RECESS )  
6 BY MS JOYCE  
7 Q Ms Blake let's look at Exhibit 3.  
8 November 19th testimony  
9 A Okay  
10 Q Page 17 note 4  
11 A Okay  
12 Q And the second sentence of that footnote  
13 it states that the Interim Rules Order is  
14 not an opinion of a court or state  
15 commission reaffirming or restating the DC  
16 Circuit's findings in USTA II and, thus  
17 does not comply with the above  
18 definition  
19 Where did you derive the position  
20 you take in that sentence?  
21 A Based on reading what progeny is and my  
22 understanding of the Interim Rules Order.  
23 what its purpose was is not doing what  
24 progeny is defined as  
25 Q So it's based on your read of the

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1 definition in Black's on progeny?  
2 A Yes and then in the context of the intent  
3 of the parties' agreement with regards to  
4 the abatement, the process  
5 Q Did you look up progeny in any other  
6 dictionary?  
7 A No I did not  
8 Q Do you have a Webster's Dictionary in your  
9 office?  
10 A Yes I do  
11 Q Do you consult it when you write  
12 testimony?  
13 A On occasion, sure, or the computer has one  
14 in its word processing system that does  
15 it, too  
16 MR MEZA I don't know if it's  
17 Webster's  
18 A I don't know if it's Webster's There is  
19 a dictionary  
20 Q It's the world according to Bill Gates  
21 A Yeah  
22 Q Could a decision by a tribunal that is not  
23 a court or state commission, in your  
24 understanding, be part of the progeny of  
25 USTA II?

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1 MR MEZA Object to form  
2 A Can you ask that again? I'm sorry I  
3 missed the terms  
4 Q Could an opinion of a tribunal that is not  
5 a court or a state commission be part of  
6 the progeny of USTA II?  
7 MR MEZA Object to the form  
8 A I guess if it was reaffirming If  
9 it's -- The hold -- The decision it did  
10 was reaffirming or reholding with what  
11 that initial lead decision was doing  
12 Q Could a decision of the FCC be part of  
13 USTA II progeny?  
14 MR MEZA Object to the form  
15 A Again, I'm not an attorney, you know  
16 what -- how their orders are, but my  
17 understanding, if a subsequent decision or  
18 a succeeding decision reaffirmed or upheld  
19 what that lead decision did then it could  
20 be considered or included in progeny  
21 Q On page 17, up in the text lines 11 to  
22 13  
23 MR MEZA Of what exhibit?  
24 MS JOYCE Of the same page, and  
25 it's --

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1 MR MEZA Exhibit 3?  
2 MS JOYCE -- Exhibit 3, November  
3 9th testimony  
4 MR MEZA Okay Thank you  
5 A Lines? I'm sorry  
6 Q 11 to 13  
7 A Okay  
8 Q And what you state is it was to address  
9 the Joint Petitioners' concern that  
10 BellSouth would bump the Joint Petitioners  
11 from their current agreement during the  
12 90-day abatement Do you see that?  
13 A Yes  
14 Q How was the Joint Petitioners' concern  
15 expressed to you?  
16 A Through my discussions with counsel my  
17 counsel, and some -- I guess discussion  
18 with people at BellSouth  
19 Q Did you speak with any representative of  
20 the Joint Petitioners on this issue?  
21 A No Again, it was my understanding the  
22 intent of the whole abatement was to put  
23 that in place to avoid any concern or --  
24 by the Joint Petitioners that we would  
25 bump them off their current agreement

13 (Pages 197 to 200)

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1 during the period from USTA II to the  
2 final rules, which was not BellSouth's  
3 intent  
4 Q And was there any writing that you saw  
5 that indicated the Joint Petitioners'  
6 concern about being, quote, 'bumped'?  
7 A Not specifically in that regard, but I  
8 believe that's the intent of the entire  
9 abatement agreement  
10 Q And looking at page 18 of your November  
11 19th testimony, lines 17 to 20. You state  
12 that the Joint Petitioners are attempting  
13 to expand the scope of the -- I think  
14 there's a --  
15 MR MEZA: Yeah, there's a typo.  
16 Q Okay.  
17 -- of this issue to address  
18 BellSouth's 271 obligation or state  
19 requirements. Do you see that?  
20 A Yes.  
21 Q And why do you make that statement here?  
22 A Well, it appears -- again, reference back  
23 to the question on page 161 -- through  
24 their testimony and my understanding of  
25 their position, the Joint Petitioners are

1 we have an obligation for certain  
2 checklist items to continue to provide on  
3 an unbundled basis, but it's not dictated  
4 that they be provided at TELRIC prices.  
5 They're outside the scope of the  
6 unbundling obligation of 251.  
7 Q And on what do you base your position that  
8 elements provided under section 271 do not  
9 have to be at TELRIC prices?  
10 A Paragraph 664 of the Triennial Review  
11 Order was very clear on that. Actually,  
12 the North Carolina Commission has  
13 found -- made that same finding in the  
14 DeltaCom arbitration we had here last  
15 year, which I cite in my previous  
16 testimony, in my North Carolina testimony.  
17 Q So is it BellSouth's position that the  
18 North Carolina Commission's decision in  
19 ITC DeltaCom binds BellSouth?  
20 A Well, it reaffirmed that -- in my  
21 opinion, it reaffirmed that the state  
22 commission does not have jurisdiction to  
23 dictate the rates for 271 elements. It's  
24 a federal -- covered by federal section  
25 201 and 202, to be nondiscriminatory.

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1 asking the state commissions to continue  
2 to require us to provide loops and  
3 transport outside of our unbundling  
4 obligations of 251.  
5 Q And so is it your testimony that any  
6 unbundling obligation not encompassed by  
7 section 251 of the Telecommunications Act  
8 of 1996 should not be imposed?  
9 A No. Whatever our obligations are pursuant  
10 to 271, if it's an unbundling obligation,  
11 that's pursuant to 271. We will, of  
12 course, comply with that or that is a  
13 federal requirement, to my understanding,  
14 the state does not have jurisdiction or  
15 control or cannot set anything to do with  
16 271 obligations. It's at the FCC as far  
17 as the basis for how we provide that  
18 under what conditions we provide 271  
19 elements.  
20 Q Is there any other federal statutory  
21 provision that would obligate BellSouth to  
22 lease parts of its local network?  
23 A I mean, you've got 271 -- I mean, 251, if  
24 it was to be unbundled, compliant with 251  
25 at TELRIC rates as set forth in 251, 271,

1 just, and reasonable.  
2 Q And so that decision applies to BellSouth?  
3 A Are you talking about "that decision"  
4 being DeltaCom?  
5 Q Yes.  
6 A Well, in the context of the DeltaCom  
7 arbitration and the position that was teed  
8 up there, which was we have an obligation,  
9 what the market rates would be for  
10 enterprise switching, again, enterprise  
11 switching was not a 251 obligation and,  
12 therefore, it's at market rate and they're  
13 not -- don't have jurisdiction over what  
14 the rates, terms, and conditions are.  
15 Q What kind of pricing would apply to an  
16 element provided under section 271?  
17 A It would be the standards set forth in 201  
18 and 202 of the Act, which is just,  
19 reasonable, and nondiscriminatory, just  
20 and reasonable, basically.  
21 Q Do you believe that TELRIC prices are just  
22 and reasonable?  
23 MR MEZA: Object to form.  
24 A No, I do not.  
25 Q And why not?

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1 A I think depending on how the TELRIC  
2 principles were -- the TELRIC methodology  
3 was implemented in a state -- and, again  
4 I'm not a cost witness or whatever, but I  
5 mean TELRIC did all sorts of gyrations  
6 The states made cuts in some of the UNE  
7 proceedings made adjustments to those  
8 that we may not feel is appropriate so  
9 the resulting rates that are out there  
10 today may not be recovering the cost to  
11 provide the element that we're providing  
12 Q Do those prices fail to comply with the  
13 just and reasonable standard of section  
14 201?  
15 MR MEZA Object to the form  
16 A I mean my understanding of just and  
17 reasonable standard is somewhat analogous  
18 to what the market will bear If  
19 there's -- If it's an obligation we're  
20 not obligated -- If it's an element we're  
21 not obligated to provide pursuant to 251,  
22 there would have been the determination  
23 that CLECs are not impaired without that  
24 element at TELRIC rates so there's other  
25 alternatives out there But we're

1 A Based on the alternatives that are out  
2 there in the marketplace for different  
3 services You look on any website KMC  
4 anybody who -- any of these Joint  
5 Petitioners offer services in competition  
6 with each other with incumbents  
7 Q Do you know what the term market share  
8 means?  
9 A In a general sense, yes  
10 Q Do you have an understanding as to what  
11 BellSouth's market share is in local  
12 telecommunications?  
13 A No, not off the top of my head  
14 Q And have you done any study of antitrust  
15 law under American jurisprudence?  
16 A No, I have not  
17 Q And do you know what the term market power  
18 means?  
19 MR MEZA Object to the form  
20 A Somewhat Probably would have to do some  
21 recollection, I guess I mean, I can't  
22 off the top of my head  
23 Q Do you know whether -- Under your limited  
24 understanding, do you know whether  
25 BellSouth has market power?

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1 continuing to provide it as an unbundled  
2 element pursuant to 271 There's other  
3 alternatives out there for that same  
4 element And the market will dictate  
5 Regulations should not dictate what that  
6 price will be  
7 Q Which market will dictate that?  
8 A The telecom market If there's other  
9 alternatives providing that transport  
10 providing that mass market loop or  
11 enterprise loop enterprise switching,  
12 there's other alternatives out there based  
13 on findings of part of our unbundling  
14 obligations then whatever other  
15 alternatives are out there that were  
16 existing that allowed the FCC to realize  
17 CLECs are not impaired means there's other  
18 alternatives So somebody else is selling  
19 it cheaper, you know, we'll compete on the  
20 price if we're going to provide that  
21 service outside of TELRIC  
22 Q Do you believe that the telecom market is  
23 competitive?  
24 A Yes  
25 Q And why do you believe that?

1 A Well, I think market power in my again,  
2 understanding of it is that if -- we have  
3 the power that it precludes somebody from  
4 entering a market And we do not have  
5 that power because we have to open up our  
6 market for competition  
7 So, in essence, BellSouth does not  
8 have market power We've opened up our  
9 market as it's been determined by the  
10 state commissions and the FCC that our  
11 local market is open for competition  
12 Q And from what did you derive that  
13 understanding?  
14 A Based on my recollection of what market  
15 power is as far as preventing somebody  
16 from entering a market in which it's very  
17 clearly been found that we're not  
18 precluding CLECs from entering our market  
19 -- local market  
20 Q Has BellSouth appealed any of the state  
21 TELRIC pricing decisions that it felt  
22 was -- were wrong?  
23 A I believe we have in the past appealed the  
24 Georgia decision the Georgia UNE  
25 decision I'm not familiar with every

15 (Pages 205 to 208)

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1 case but various and sundry decisions  
2 Q What was the outcome of that appeal in  
3 Georgia?  
4 A Actually, there's a hearing that starts  
5 today in Georgia to address the remand of  
6 that decision  
7 Q Why was the decision remanded?  
8 A Because the court -- Because my  
9 understanding the court did not think the  
10 Commission did it right so they remanded  
11 it back to the PSC to redo some of the  
12 inputs and refile  
13 Q Was that a federal court?  
14 A I don't know Sorry  
15 Q Were there any other states in which  
16 BellSouth filed an appeal of a TELRIC  
17 pricing decision?  
18 MR MEZA Object to the form  
19 A There may have been I don't know I  
20 mean, UNE dockets have been going on for  
21 four or five years now And depending on  
22 the different parts of the decision we  
23 may have certain aspects of it I'm sure  
24 we asked for reconsideration on probably  
25 every one of them, but whether it extended

1 federal statute?  
2 A I'm not familiar with all the federal  
3 statutes to be able to answer that  
4 question  
5 Q Do you know if BellSouth has an obligation  
6 to provide special access?  
7 A No, I don't specifically know We do We  
8 do offer special access Whether we're  
9 obligated to do it I'm not familiar with  
10 that  
11 Q On page 18 of your November 19th  
12 testimony --  
13 A Uh-huh  
14 Q -- Lines 16 to 17 you make the statement  
15 reveals that their strategy is to use the  
16 Authority, capital A, to circumvent orders  
17 of the FCC Do you see that?  
18 A Yes  
19 Q From what do you derive this position?  
20 A Well, based on my reading of the Joint  
21 Petitioners' testimony, my reading of the  
22 Interim Rules Order, and the fact that  
23 high-capacity loops, enterprise market  
24 loops, we're not obligated to provide  
25 them They've been vacated and of

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1 on to an appeal, I don't know  
2 Q So there were other state TELRIC decisions  
3 besides in Georgia that BellSouth felt  
4 were wrong?  
5 A Yes  
6 Q Can you name any such states?  
7 MR MEZA Object to form  
8 A I believe we probably asked for  
9 reconsideration on all nine of them, to be  
10 honest with you  
11 But again, without checking each  
12 one individually, I can't say that for  
13 sure  
14 Q Do you know what special access is?  
15 A Yes It's a service we offer out of our  
16 interstate or intrastate tariffs I mean,  
17 that's a broad term As opposed to switch  
18 access it's basically not involving a  
19 switch So I guess that's maybe a  
20 distinction of it It's between points of  
21 different networks  
22 Q Do you know if special access service is  
23 provided pursuant to section 251?  
24 A No, it is not  
25 Q Is special access provided pursuant to any

1 course doing that in the interim period  
2 By the virtue that the Joint Petitioners  
3 are attempting to get the Authority, which  
4 is the Tennessee Regulatory Authority in  
5 this case, this testimony, to require  
6 BellSouth to continue to provide something  
7 that is currently not an obligation  
8 Q Do you believe that Petitioners have a  
9 strategy of using any other state  
10 commission in the BellSouth region to  
11 circumvent orders of the FCC?  
12 A Well, I believe their testimony was  
13 consistent from what I've seen in the  
14 other states where it's been filed  
15 relative to this issue that they're  
16 seeking the state commissions to continue  
17 to require us to provide unbundled loops,  
18 like passive loops transport  
19 Q Do you believe that the Authority or any  
20 state commission could circumvent orders  
21 of the FCC?  
22 A I'm not going to attempt to speak to what  
23 any of the state commissions can do  
24 Whether they'll be successful in it or not  
25 is a matter I'll let our attorneys battle

16 (Pages 209 to 212)

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1 with But I mean again back to what we  
2 kind of discussed yesterday, if it's in  
3 conflict with something the FCC has  
4 already deemed the way it should be done.  
5 then they shouldn't be issuing orders that  
6 are in conflict with what the FCC or the  
7 federal regime requires  
8 Q Do you think that any state commission in  
9 the BellSouth region has an intent to  
10 circumvent an order of the FCC?  
11 MR MEZA Object to the form  
12 A I can't speak for what they may end up  
13 doing or think they can do  
14 Q Ms Blake, could you please pick up your  
15 November 12th testimony Exhibit 3  
16 A Uh-huh I'm sorry page?  
17 MR MEZA Is it 2?  
18 MS JOYCE Exhibit 2, page 3  
19 MR MEZA Okay  
20 A Page 3  
21 MR MEZA All right  
22 A Page 3  
23 MR MEZA Exhibit 2, page 3  
24 A Okay  
25 Q At lines 17 to 18, you state, I restate my

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1 original direct substantive testimony  
2 verbatim  
3 A Yes  
4 Q What does that mean?  
5 A For those issues that have not been  
6 resolved during the abatement period and  
7 the parties had not agreed to modify their  
8 positions because there are -- the next  
9 sentence -- or the end of that sentence  
10 basically talks about those issues where  
11 the parties had agreed to make -- you  
12 know, they're allowed to modify their  
13 position or their testimony that was  
14 previously filed Substantive testimony  
15 verbatim means that pretty much what I  
16 filed in June, I said the same thing in  
17 this testimony again because this  
18 testimony was direct rebuttal We were  
19 rebutting what the Joint Petitioners said  
20 in their new testimony Some of the page  
21 cites would have had to change, so  
22 substantive the context, the positions,  
23 et cetera, were verbatim but some of the  
24 references to Joint Petitioners' testimony  
25 may have been tweaked or changed to

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1 reflect the correct cite That is what is  
2 intended by that sentence  
3 Q And what does the word "verbatim" mean to  
4 you?  
5 A The same as  
6 Q So other than having to tweak the cites to  
7 Petitioners' page references in the  
8 testimony, did anything else change?  
9 A Not to my knowledge, no It was as we  
10 filed or as it was set forth in my June  
11 testimony for those unresolved issues  
12 Q And so when in lines 19 to 20 --  
13 A Uh-huh  
14 Q -- you list Issues 4, 9, 12 23 50 51  
15 and 63 --  
16 A Correct  
17 Q -- that indicates these are issues that  
18 may have updated testimony?  
19 A Yes, previously provided updated testimony  
20 for issues -- those seven issues Uh-huh  
21 Q Are those the only issues that got updated  
22 testimony?  
23 A From what was previously filed in June,  
24 yes Of course, the new supplemental  
25 issues were not in the June testimony, so

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1 those are supplemental  
2 Q Please turn to page 34 of that exhibit  
3 And at lines 18 to 19, this is discussing  
4 the definition of end user, which is Issue  
5 G-2  
6 A Okay  
7 Q You state, the end user should be defined  
8 as it is customarily used in the industry,  
9 that is the ultimate user of the  
10 telecommunications service  
11 A Yes  
12 Q And what did you mean by "customarily used  
13 in the industry"?  
14 A I think that means -- My understanding of  
15 any telecom provider talks about their end  
16 users that's who is actually the user of  
17 that service they're providing  
18 Q Where did you derive your understanding of  
19 what is customarily used in the industry?  
20 A From my 23 years of experience with  
21 BellSouth and dealing with end users and  
22 providing services  
23 Q Does BellSouth ever serve a customer that  
24 is not the ultimate user of the  
25 telecommunications service?

17 (Pages 213 to 216)



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1 A Sure They serve interexchange carriers  
2 and CLECs and  
3 Q Does BellSouth serve ISPs?  
4 A I believe we do with all the -- yes, we  
5 serve ISPs I mean, ISPs can buy our  
6 services, yes  
7 Q And is an ISP the ultimate user of the  
8 service?  
9 A A lot of it depends on what the service  
10 they're buying from us is  
11 Q Do ISPs serve customers?  
12 MR MEZA Object to the form  
13 A I would imagine I would hope they would  
14 serve customers, or why would they be in  
15 business? Yeah, I mean --  
16 Q Do they provide telecommunication service  
17 to customers?  
18 A I'm not sure I know the right answer to  
19 that one in that, depending if it's an  
20 enhanced service that they're offering --  
21 whether it's defined as an enhanced  
22 service or telecom service is something I  
23 haven't really grasped as to the whole ISP  
24 advanced services issue So depending  
25 on -- I mean, they could if they're also

1 ISPs?  
2 A We have an interstate wholesale offering  
3 that is available to ISPs to purchase.  
4 yes  
5 Q And when ISPs purchase that product are  
6 they the ultimate user of the service?  
7 A May be the ultimate user of that service  
8 I'm not sure if that service is considered  
9 a telecom service, I mean, enhanced  
10 service they're buying  
11 Q But it is a service?  
12 A A service, yeah I mean, a service is  
13 many things  
14 Q Should other telecommunications carriers  
15 be able to sell services to ISPs?  
16 A Should other telecommunication  
17 services -- sure I mean, I don't think  
18 BellSouth's trying to dictate who  
19 telecommunication services can provide  
20 services to through this proposed language  
21 in this issue that's teed up here  
22 Q Could other telecom carriers provide  
23 services to carriers?  
24 A Sure I mean, CLECs provide services  
25 They resell their services or provide

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1 certified as a CLEC or whatever, provide  
2 telecom services, if they're authorized to  
3 do that  
4 Q Do ISPs provide broadband services to  
5 customers?  
6 A They could, yeah They probably -- It's  
7 possible I mean, I don't know what every  
8 ISP provides their customers  
9 Q What kind of service could BellSouth sell  
10 to an ISP in which the ISP would be the  
11 ultimate user of the service?  
12 A It could be their administrative lines at  
13 the business, say Earthlink's offices  
14 they could sell them the facility -- the  
15 services that terminate to that their  
16 office building, you know, like if this  
17 was their building we provide the  
18 business lines or whatever services that  
19 would be a service we provide to the ISP  
20 as a customer end user  
21 Q You mean a business line so that the ISP  
22 could make phone calls out of its business  
23 office?  
24 A Yeah receive calls conduct its business  
25 Q Does BellSouth provide DSL service to

1 wholesale services If they have a switch  
2 and they want to allow somebody else to  
3 use their switch, that would be selling  
4 their services to another carrier  
5 Q And BellSouth has no objection to that  
6 practice?  
7 A No I mean again the whole context of  
8 when it's appropriate for a CLEC to buy a  
9 UNE to serve their end user needs to be in  
10 the context of what's allowed for use of  
11 UNEs I mean, I know a UNE can be used --  
12 or the services in this contract can be  
13 used to provide service to their end  
14 user  
15 (DEPOSITION EXHIBIT NO 10 WAS MARKED )  
16 Q I'm handing you a document marked Exhibit  
17 10  
18 MR MEZA Thanks  
19 Q Do you recognize this document?  
20 A I'm trying to see the different -- okay  
21 Okay Yes I have seen this document  
22 MS JOYCE And let me reflect for  
23 the record that these are three pages that  
24 have been put together but did not appear  
25 in this order when they were provided to

18 (Pages 217 to 220)

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1 the Petitioners  
2 MR MEZA And they're two  
3 different sets One's Alabama one's  
4 North Carolina  
5 MS JOYCE Right  
6 MR MEZA Okay  
7 A Yes  
8 Q Would you please look at the last page of  
9 this three-page exhibit?  
10 A Uh-huh  
11 Q And do you see that this is a BellSouth  
12 response to Joint Petitioners' first set  
13 of requests for production It says Item  
14 G-2-1 in the top right corner?  
15 A Uh-huh Yes  
16 Q And down the page appears BellSouth's  
17 response, and it states that BellSouth  
18 states that definitions for end user can  
19 be found in section 2.6 of FCC Tariff No  
20 1, section E2.6 in each state's tariff,  
21 and the individual CLEC interconnection  
22 agreements Do you see that?  
23 A Yes  
24 MR MEZA Were you quoting,  
25 because you left out access if you were

1 A Yes It's contained in this tariff yes  
2 Uh-huh  
3 Q And I'll read the definition It states  
4 that the term end user denotes any  
5 individual, partnership, association,  
6 corporation, governmental agency, or any  
7 other entity which A obtains a common  
8 line, uses a pay telephone, or obtains  
9 intrastate service arrangements in the  
10 operating territory of the company, or B,  
11 describes to intrastate services provided  
12 by an IC, capital I, capital C, or uses  
13 the services of the IC when the IC  
14 provides intrastate services for its own  
15 use  
16 A Uh-huh  
17 Q And please now turn to the page marked at  
18 the top right corner sixth revised page 37  
19 in this same exhibit, three more pages or  
20 so back  
21 A Okay  
22 Q Do you see --  
23 A Okay  
24 Q -- there's a definition there for  
25 interexchange carriers?

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1 quoting, each state's access  
2 MS JOYCE I did do that Thank  
3 you for the correction  
4 Q I'm handing you a document that's marked  
5 Exhibit 11  
6 (DEPOSITION EXHIBIT NO. 11 WAS MARKED)  
7 Q Do you recognize this document?  
8 A It appears to be the section of our access  
9 services tariff in North Carolina  
10 Q And do you see that it's section E2.6?  
11 A Yes  
12 Q And would you agree that this is one of  
13 the documents to which Exhibit 10 refers?  
14 A Yes  
15 Q Please turn to what's marked in the top  
16 right corner as fourth revised page 35  
17 A Yes  
18 Q Do you see that?  
19 A Yes  
20 Q Three-quarters down the page, there  
21 appears a definition for end user  
22 A Yes  
23 Q And do you understand that this is the  
24 definition that BellSouth uses in this  
25 tariff for end user?

1 A Yes I see that  
2 Q And that it indicates here that  
3 interexchange carriers is abbreviated IC?  
4 A Yes  
5 Q So do you understand that in the  
6 definition of end user, when it says IC,  
7 it means interexchange carrier?  
8 A Well, an interexchange carrier is a  
9 defined term that denotes any individual  
10 which subscribes to the services under  
11 this tariff So if there's somebody else  
12 that describes to the services under this  
13 tariff I guess they could be included in  
14 that definition of interexchange carrier  
15 So with that clarification, the  
16 paragraph of the definition is what it is  
17 and how it links back to the previous  
18 definition is in the same context  
19 Q So could an ISP be an interexchange  
20 carrier?  
21 MR MEZA Object to the form  
22 A I mean if an ISP is buying services out  
23 of this tariff as -- and it's an  
24 individual, partnership, corporation, and  
25 subscribes to services under this tariff.

19 (Pages 221 to 224)

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1 then it could be denoted as an  
2 interexchange carrier  
3 Q And do you see also that the definition at  
4 the end states that the term interexchange  
5 carrier is not to be construed to include  
6 BellSouth SWA Watts and private line  
7 customers unless those customers are  
8 certified public utilities?  
9 A Yes I see that  
10 Q And what does that sentence mean to you?  
11 A It means that two categories of customers  
12 that are excluded from the definition of  
13 interexchange carrier as that term is used  
14 in this tariff  
15 Q Could an ISP subscribe to private line  
16 services?  
17 A I'd have to look at the private line  
18 tariff to see if there's any restrictions  
19 for an ISP subscribing to those services  
20 I can't answer that right here  
21 Q Are there any other types of carriers that  
22 would fall under the definition of IC as  
23 used in this exhibit?  
24 A I guess if they qualify as an individual  
25 partnership, corporation that subscribe to

1 A I mean the end user as that term is  
2 defined and used in this tariff covers  
3 individuals partnerships, associations  
4 or any other agency which obtains the  
5 items listed there or obtains intrastate  
6 service arrangements in the operating  
7 territory that's BellSouth in this or  
8 subscribes to intrastate services provided  
9 by an IC so they would be the end user of  
10 that IC If that IC obtained -- You  
11 know, going back to those two definitions,  
12 if the IC is obtaining services from this  
13 tariff then they in sense have --  
14 their end users have obtained services  
15 from them  
16 Q Is it a requirement that a person also  
17 subscribe to BellSouth's services in order  
18 to be considered an end user under this  
19 tariff?  
20 A No  
21 Q Could you please turn to your November  
22 12th testimony at page 35 very bottom of  
23 the page 35?  
24 A November 12th, 35 Okay  
25 Q At line 25, the sentence begins the issue

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1 services in this tariff, they would be  
2 considered an IC in the context of this  
3 tariff  
4 I mean, to specifically identify a  
5 carrier, it could be a corporation A  
6 carrier's a corporation I mean, if they  
7 have the abilities to subscribe to  
8 services out of this tariff they would  
9 fit that definition of interexchange  
10 carrier  
11 Q And so an entity or a person that  
12 purchases service from an IC as defined  
13 here would be an end user?  
14 A A person that purchases service from an IC  
15 would be the end user of that IC of that  
16 interexchange carrier  
17 Q Would it be an end user as defined in this  
18 exhibit?  
19 A Not necessarily, unless they're also  
20 buying services -- independent of what  
21 they're buying directly from the IC,  
22 they're buying services directly from this  
23 tariff  
24 Q And what in the definition of end user on  
25 page 35 leads you to that conclusion?

1 is not who CLPs serve, but, rather, what  
2 service qualifies for UNEs and UNE  
3 prices Do you see that?  
4 A I'm sorry, say the line again  
5 Q 25, way at the bottom  
6 A Oh, okay Yes  
7 Q And what did you mean by what service  
8 qualifies for UNEs and UNE prices?  
9 A The UNEs are to be used to provide telecom  
10 services to an end user, and their  
11 language in the agreement and in the  
12 definition of a UNE indicates the UNE is  
13 from point A to point B or say, a loop  
14 as we've discussed earlier, and the uses  
15 of those UNEs is clearly spelled out in  
16 the language We are not in dispute You  
17 have to be able to use -- to provide the  
18 qualifying service or nonqualifying  
19 service, which you're also providing a  
20 qualifying service so the standards or  
21 the ability to -- for a CLEC to use a UNE  
22 to provide service is set forth on how  
23 UNEs can be used and why -- how they can  
24 get access to those UNEs  
25 Q Where is that standard set forth?

20 (Pages 225 to 228)

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1 A That was spelled out in the TRO and the  
2 whole first report and order and -- I  
3 mean, the Act as how to assess to UNEs to  
4 provide a telecom service  
5 Q Could you look at Exhibit 5?  
6 A Uh-huh Yes  
7 Q And can you find the discussion of -- or  
8 any discussion of qualifying services in  
9 this opinion?  
10 A I know there's some in here somewhere  
11 Hang on  
12 Page 6 in the table of contents  
13 it's discussing the qualifying  
14 service/nonqualifying service distinction  
15 on page 591 -- or cite 591  
16 Q Anywhere else?  
17 A Yes It's on page 20  
18 And probably in their conclusion  
19 they restated what they were doing  
20 relative to qualifying and nonqualifying  
21 the third paragraph They vacated the  
22 Commission's distinction between  
23 qualifying and nonqualifying and  
24 remanded it, the distinction, but they  
25 don't vacate the decision that competing

1 since '96  
2 But as far as the basis for a CLEC  
3 to obtain UNEs to provide services in my  
4 opinion, has been clearly defined in what  
5 you can use UNE for and what a UNE is and  
6 how it can be used  
7 Q And how does that issue have a bearing on  
8 how end user is defined in your opinion?  
9 A Well, again BellSouth -- I think the  
10 bearing comes from what appears to be, in  
11 our opinion, using the term customer any  
12 customer to me defeats the purpose of some  
13 of the inherent definitions of when a loop  
14 could be used for example If it can  
15 terminate to any customer instead of a  
16 loop that has to terminate to an end user  
17 -- I mean, another carrier could be  
18 considered another customer, and that  
19 deflates the purpose of elimination of an  
20 entrance facility You know, you could  
21 redefine a loop to be between carrier --  
22 between BellSouth and another carrier, and  
23 that's not what a loop is, in the context  
24 of an EEL and who can get an EEL  
25 Q What is a loop?

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1 carriers are not entitled to EELs or  
2 unbundled EELs for provision of long  
3 distance exchange services  
4 Q So what does that mean to you?  
5 A That means they vacated the distinction  
6 Whatever the TRO had defined between  
7 qualifying and nonqualifying, they vacated  
8 that back to the FCC and remanded the  
9 other portion, but they didn't vacate it  
10 the decision that carriers are not  
11 entitled to EELs for the provision of long  
12 distance services  
13 Q So were there -- do you believe there  
14 were other qualifying service standards  
15 that were not vacated?  
16 A I mean this whole issue of end user in  
17 my understanding of the negotiations was  
18 teed up as it relates to EELs And this  
19 is particularly talking about  
20 qualifying/nonqualifying as it relates to,  
21 you know provide EELs or obtain EELs  
22 Whether there's other references to what  
23 qualifies or doesn't qualify as a telecom  
24 service, there may or may not be I'm not  
25 familiar with every word of every decision

1 A A loop is between the distribution frame  
2 in our central office and the end user  
3 customer premises, a demarcation point on  
4 that end user customer premises  
5 Q And where do you derive that definition  
6 from?  
7 A I think it was paragraph 249 of the TRO  
8 and I'm sure it was defined in the first  
9 report and order and the UNE Remand  
10 Q Could you please pick up Exhibit 9?  
11 A Uh-huh  
12 Q And this is paragraph 249 of the TRO?  
13 A Uh-huh  
14 Q Is this where you're deriving your  
15 definition of a loop from?  
16 A That's one of the places where they  
17 restate the definition of a loop And at  
18 the top of page 152 they say, consistent  
19 with the definition the Commission adopted  
20 in the UNE Remand Order, so again that  
21 goes back to how -- the definition as they  
22 adopted it there Complete transmission  
23 path between the incumbent LEC's main  
24 distribution frame and its central office  
25 and the demarcation point at the

21 (Pages 229 to 232)

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1 customer's premises  
2 Q Do you see a definition or explanation of  
3 what customer means in that sentence in  
4 this paragraph?  
5 A No, I don't see a definition of a customer  
6 in this paragraph  
7 Q Do you know whether the FCC has defined  
8 the word customer anywhere?  
9 A There may be something somewhere in -- I  
10 don't know specifically  
11 Q At page 36 of your November 12th  
12 testimony  
13 A I'm sorry, say that again  
14 Q November 12th the thick testimony at page  
15 36  
16 A Okay  
17 Q You have a discussion at lines 16 to 19  
18 that Petitioners refer to attachment  
19 three  
20 A Right  
21 Q For example, KMC's section 10.6.1 of  
22 attachment 3. It follows a more general  
23 discussions in 10.6 which addresses  
24 NPA/NXXs within a rate center assigned to  
25 end users outside of the LATA where that

1 may not always necessarily be together  
2 The end user is the end user, the ultimate  
3 user of the service as we're attempting  
4 to define it for purposes of the  
5 agreement, the same definition that's been  
6 used for eight years now. And I guess  
7 it's unclear to BellSouth why there's this  
8 sudden revamp of trying to change end user  
9 to mean something other than the ultimate  
10 user of the service  
11 Q If BellSouth deems that use of the term  
12 end user as applied to an ISP is clearly  
13 inappropriate, is BellSouth going to  
14 change section 10.6 to make it  
15 appropriate?  
16 MR MEZA: Object to the form  
17 A I don't know if that's being addressed or  
18 how we're clarifying that, you know, for  
19 future use. I mean, I don't -- it's not a  
20 disputed section. I don't believe, in this  
21 agreement we're arbitrating here. The  
22 parties appear to clearly understand its  
23 application and use.  
24 Q Do you think it's permissible for an  
25 inappropriate use of the term end user

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1 rate center is located. Do you see that?  
2 A Yes  
3 Q And the significance of section 10.6 with  
4 regard to the definition of end user is  
5 what?  
6 A I believe section 10.6 of attachment 3 was  
7 talking about when reciprocal compensation  
8 is due and in the context of this issue  
9 relative to ISPs not being local traffic,  
10 from that standpoint.  
11 Q And what is the significance of an ISP --  
12 traffic to an ISP not being local traffic?  
13 A Well, it would not be available to receive  
14 reciprocal compensation for non-local  
15 traffic, traffic to that ISP.  
16 Q Is the ISP an end user in that instance?  
17 A Again, I mean, as we stated here -- and  
18 the whole point I was attempting to make  
19 in this section -- is in that context it  
20 was referred to, they may be an end user  
21 but because the traffic is non-local, it's  
22 not appropriate to pay reciprocal  
23 compensation.  
24 So, again, in hindsight,  
25 associating the word end user with an ISP

1 should remain in the agreement?  
2 MR MEZA: Object to the form.  
3 A Well, it needs to be considered in the  
4 context of the section that it's being  
5 discussed in. I mean, this is dealing  
6 with reciprocal compensation and when it's  
7 appropriate for what traffic to be paid  
8 on. It is what it is.  
9 The intent of -- The parties very  
10 clearly, you know, understood when using  
11 those terms that it obviously didn't  
12 appear to be a concern relative to the  
13 intent of using it in this section  
14 relative to reciprocal comp, so it's not  
15 in dispute. It's agreed-upon language, is  
16 my understanding.  
17 Q So is it fair to say that you think that  
18 it's all right the way that use of the  
19 term end user appears in 10.6?  
20 A If the parties clearly understand what the  
21 intent of use of the term is, they can use  
22 whatever word they want.  
23 Q Do you think that it is important in an  
24 interconnection agreement for terms to be  
25 used in a consistent manner?

22 (Pages 233 to 236)

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1 A I mean generally that would be the case  
2 There may be occasions where it's  
3 appropriate to use that term in a  
4 different context, depending on what the  
5 overall situation is  
6 Q And who would decide when that is  
7 appropriate?  
8 A I would say the parties negotiating the  
9 agreement would make that decision  
10 Q And if they can't make that decision?  
11 A Here we are We end up where we are, in  
12 arbitration  
13 Q Please turn to your November 19th  
14 testimony, Exhibit 3  
15 A Uh-huh  
16 Q Page 20 At lines 19, I think to 21, you  
17 quote the Webster's Dictionary --  
18 A Uh-huh  
19 Q -- which defines end as the last part of a  
20 thing, i.e., the furthest in distance,  
21 latest in time or last in sequence or  
22 series  
23 A Correct  
24 Q Does that close the definition, that  
25 sequence or series?

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1 A No  
2 Q Is that the end?  
3 A Dot, dot, dot there, that would indicate  
4 there's more after that  
5 Q That's all that you've quoted out of that  
6 definition?  
7 A That's all I quoted out of that  
8 definition  
9 Q Are you familiar with a book called the  
10 Newton's Telecom Dictionary?  
11 A I've seen it yes Actually I may have  
12 one Uh-huh  
13 Q Is there a copy in your personal office?  
14 A I think there is It's quite old, but  
15 there is one  
16 Q Do you know whether end user is defined in  
17 that dictionary?  
18 A I don't know I haven't looked for that  
19 in there  
20 Q Did you look in Newton's as to whether end  
21 user is in there?  
22 MR MEZA Object to form  
23 A No, I did not Sorry No I did not  
24 Q Why did you rely on the Webster's  
25 Dictionary on this page?

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1 A It's a commonly used dictionary that a lot  
2 of people rely on  
3 Q Did you look in Black's Dictionary for a  
4 definition of end user?  
5 A No  
6 Q Why not?  
7 A Looked at Webster's, found a definition  
8 that fit the purpose for what I was  
9 attempting -- the point I was trying to  
10 make in my testimony  
11 Q Is that the only definition you looked at?  
12 A Relative to this issue?  
13 Q Yeah  
14 A Yes  
15 Q On page 21 of this same exhibit --  
16 A Uh-huh  
17 Q -- at lines 13 to 15, you state that the  
18 provisions of the Telecommunications Act  
19 of 1996 were not designed to allow CLECs  
20 to rewholesale to another carrier Do you  
21 see that?  
22 A Yes  
23 Q On what do you base that opinion?  
24 A The intent of the Act was to -- My  
25 understanding of the Act was to provide

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1 the ability of competing  
2 telecommunications carriers, CLECs to  
3 obtain services from the incumbent that  
4 would enable them to provide  
5 telecommunication services to their end  
6 users  
7 Q And which provisions of the Act make that  
8 clear?  
9 A Section 251, 252, the whole unbundling  
10 obligations interconnection and resale  
11 Q Do you know whether there's any order of  
12 the FCC that discusses this issue?  
13 A "This issue" being?  
14 Q Whether the Act was designed to allow  
15 CLECs to rewholesale to another carrier  
16 A I would imagine the orders from the FCC  
17 and the first report and order, third  
18 report and order, TRO all were, in  
19 essence, implementing revisions of the  
20 Act So in the context of -- they set  
21 forth rules to effectuate the Act and make  
22 it available you know, for using UNEs and  
23 reselling interconnection for the purposes  
24 they were intending were discussed in  
25 there I mean, I can't point to a

23 (Pages 237 to 240)

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1 particular order cite within an order  
2 Q But your general knowledge is that those  
3 orders would support this statement at  
4 lines 13 to 15?  
5 A Yes that first -- the intent of using  
6 unbundled network access to our unbundled  
7 network was for CLECs to provide telecom  
8 service for local competition  
9 Q On page 22 of this exhibit, the next page  
10 -- it's still your November 19th  
11 testimony  
12 A Okay  
13 Q You state that Petitioners' position would  
14 result in an EEL no longer being an EEL  
15 and a loop no longer being a loop by the  
16 FCC's definition. Do you see that?  
17 A Yes I see that  
18 Q Where have Petitioners proposed a  
19 definition of an EEL that is different  
20 from the FCC's definition?  
21 A It's not so much that they've proposed a  
22 definition. The intent of -- or my  
23 understanding of their definition of end  
24 user turns into any carrier -- terminates  
25 to any carrier or any customer, they

1 MR MEZA Okay  
2 (RECESS )  
3 BY MS JOYCE  
4 Q Ms Blake could you please look at your  
5 November 12th testimony which is Exhibit  
6 2?  
7 A Okay  
8 Q At page 38  
9 A Okay  
10 Q And at lines 13 to 14, this testimony  
11 which is provided for Issue G-4 -- is that  
12 right?  
13 A Yes Yes  
14 Q Lines 13 to 14 state that in this  
15 instance the limit is, by description,  
16 completely unrelated to the severity of  
17 the damage. Do you see that?  
18 A Yes  
19 Q What did you mean by that statement?  
20 A "This incidence" is referring to Joint  
21 Petitioners' proposed language to have  
22 BellSouth be liable, that the liability be  
23 7-1/2 percent of whatever was billed as of  
24 the day in which the claim arose. In that  
25 instance, 7-1/2 percent of some amount

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1 could, in turn, terminate a loop or buy a  
2 loop to serve that terminates to a  
3 carrier. And that's not what a loop is.  
4 A loop terminates to an end user.  
5 Q Is that what it states at paragraph 249  
6 Exhibit 9?  
7 A Terminates to an end user customer.  
8 Again, this gets back to the --  
9 Q Were you --  
10 A I'm sorry. Leads to a customer. It does  
11 say customer. But again, it cites back  
12 to the UNE remand order, and I know it's  
13 been used, the terminology, the end user  
14 customer's premises. I know that  
15 terminology has been used in the context  
16 of where a loop would terminate and how an  
17 EEL can be used and the definition of a  
18 loop.  
19 Q Do you know whether BellSouth has ever  
20 taken a position in a court or a  
21 commission that an ISP is an end user?  
22 A I don't know of any offhand, whether we  
23 have or not. I don't know.  
24 MS JOYCE Perfect. Let's take a  
25 ten-minute break.

1 that is billed has no relationship to the  
2 severity of the damage caused by the  
3 nonperformance or the improper performance  
4 of what was to be provided. That's what  
5 this meant.  
6 (DEPOSITION EXHIBIT NO. 12 WAS MARKED )  
7 Q I'm handing you a document marked Exhibit  
8 12.  
9 A Okay.  
10 Q Do you recognize this document?  
11 A Appears to be a version of the general  
12 terms and conditions section of the  
13 agreement we're arbitrating that reflects  
14 disputed language. It doesn't have a date  
15 on it, so I'm not sure --  
16 MR MEZA Yeah. Which version?  
17 A -- what version this is.  
18 MR MEZA And where did you get  
19 it from? Because we've been --  
20 MS JOYCE Right.  
21 MR MEZA -- exchanging --  
22 MS JOYCE The -- I don't have  
23 the e-mail to cover this, but I can  
24 provide it later.  
25 MR MEZA I'll just take your

24 (Pages 241 to 244)

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1 representation I mean I just want to  
2 know  
3 MS JOYCE This was e-mailed to  
4 our office in November and was represented  
5 to me as the most current version  
6 THE WITNESS Okay  
7 MR MEZA Okay And I think it  
8 was e-mailed yesterday correcting that  
9 from Tamplin If it deals with Issue 4  
10 which I presume it is, we didn't have your  
11 most current language So if your  
12 question is relating to the old language  
13 then it's fine  
14 MR HEITMANN We can use  
15 Petitioners' Exhibit A -- Joint  
16 Petitioners' Exhibit if you want to look  
17 at that  
18 (DISCUSSION OFF THE RECORD )  
19 BY MS JOYCE  
20 Q And I direct your attention to page 8 of  
21 this exhibit  
22 A Yes  
23 Q And do you see where it says 10 4,  
24 limitation of liability?  
25 A Yes

1 you in accordance and -- we would give you  
2 a credit for the cost of that loop, say,  
3 as an example So the damage -- the cost  
4 of that service that we didn't perform is  
5 what we're giving you credit back for,  
6 what was not performed or improperly  
7 performed  
8 Q And the cost of that loop is assessed on  
9 what increment?  
10 MR MEZA Object to form  
11 A The rate you would pay us for that service  
12 or function we did not perform or  
13 performed improperly which is what we  
14 would credit you back for what we failed  
15 to do  
16 Q And would that be based on the month in  
17 which the problem occurred?  
18 A It would depend on what the claim was  
19 Again, the day it arose if there was --  
20 it was substantiated that it had happened  
21 you know since a point in time, then we  
22 would -- it could be proven that we  
23 failed in this period of time, then it  
24 would cover that period of time, would be  
25 my understanding

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1 Q And do you agree this is the section at  
2 issue in Issue G-4, the limitation of  
3 liability?  
4 A Yes  
5 Q Please turn the page to page 9  
6 A Okay  
7 Q And do you see there's BellSouth's version  
8 of language for this section --  
9 A Yes  
10 Q -- provided?  
11 Can you tell me what part of this  
12 language is related to the severity of the  
13 damage that may be imposed?  
14 A Talking about BellSouth's language?  
15 Q What in BellSouth's language is related to  
16 the severity of the damage?  
17 A That would be the last -- part of the last  
18 sentence that says, payment will be  
19 limited to a credit for the actual cost of  
20 the services or functions not performed  
21 Q And what does that language mean in  
22 practical terms?  
23 A In practical terms, if we fail to give  
24 you -- let me think of an example --  
25 provide a loop or provide some function to

1 Q So the way this would work is you figure  
2 out when the problem occurred, how much  
3 time elapsed, and what the cost to the  
4 Petitioner was for that particular element  
5 that had a problem, is that fair?  
6 A Well, I'm not so sure it's the cost to the  
7 Petitioner It would be the cost incurred  
8 for what was -- for that function or  
9 performance, the thing that wasn't done  
10 correctly  
11 Q The cost to whom?  
12 A To -- What you're buying from us what  
13 we're providing you pursuant to this  
14 agreement we don't perform in accordance,  
15 whatever that cost to you relative to that  
16 performance or function  
17 Q When you say "you", do you mean  
18 Petitioner?  
19 A Yes I'm sorry  
20 And again -- I mean, this  
21 language is no different than our  
22 understanding of what is common in the  
23 industry for limiting liability for the  
24 party providing service  
25 Q And is it your understanding that a

25 (Pages 245 to 248)



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1 Petitioner would purchase this service  
2 from BellSouth in order to serve a  
3 customer?

4 A Well they would purchase whatever's  
5 provided in this contract to do whatever  
6 they're allowed to do with that service  
7 compliant with whatever the rules.  
8 requirements law enable them to use that  
9 service for

10 Q Could one of those purposes be to serve a  
11 customer?

12 A Sure

13 Q Would you expect that Petitioners charge  
14 customers money for providing service to  
15 them?

16 A Would I expect the Joint Petitioners to  
17 charge their end user as a customer.  
18 certainly

19 Q If a problem occurred with an element or a  
20 service that the Petitioner was purchasing  
21 from BellSouth, could that have an effect  
22 on the service provided by the Petitioner  
23 to a customer?

24 MR MEZA Object to form

25 A Sure, it could, but I would anticipate the

1 the element or the service that the  
2 Petitioner purchased from BellSouth?

3 A Sure The results of our improper  
4 providing a service or a function could  
5 in turn, cause the Joint Petitioners'  
6 provision of that -- whatever they're  
7 using that element for to provide service  
8 to their end user, to impact their ability  
9 to provide that end user

10 And again, that gets back to  
11 limiting liability on both parties We're  
12 limiting ours to the Joint Petitioners,  
13 and, in turn, the Joint Petitioners  
14 consistent with the standard practice out  
15 there, would, in turn -- should be  
16 limiting -- and I believe they do today in  
17 their current tariffs limit their  
18 liability to their end user

19 Q Are you speaking to the issue regarding  
20 limitation of liability in that --

21 A G-5

22 Q Okay With respect to Issue G-4 --

23 A Uh-huh

24 Q -- have you ever experienced an  
25 interruption in utility service as a

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1 Joint Petitioner would have similar, if  
2 not, you know, actually, more stringent  
3 limitation of liability in their  
4 relationship with their end user that  
5 they would in turn would be -- have some  
6 limitation of liability in that event that  
7 what we failed to provide the Joint  
8 Petitioner and they in turn caused them to  
9 fail to provide to their end user, they  
10 would be protected by their limitation of  
11 liability in their own tariffs or  
12 contracts That would, you know, make our  
13 language very appropriate in the context  
14 of the way the parties operate

15 Q Is it possible that service to your  
16 customer could be suspended as a result of  
17 a problem with this service or element?

18 MR MEZA Object to form

19 A Service could be -- Service to a customer  
20 -- Whose customer? I'm not sure I  
21 follow --

22 Q The Petitioners are serving a customer

23 A Right

24 Q And is it possible that that service could  
25 be suspended as a result of a problem with

1 customer yourself?

2 MR MEZA Object to form

3 A I'm most certain I have over the course of  
4 having telephone service and paying for  
5 it, yes or any utility, or power or --  
6 yes, certainly

7 Q What if anything did you do about it?

8 MR MEZA Same objection

9 A Depending on -- For example, if it was  
10 telephone service and it was out of  
11 service for an X number period of time  
12 credit for the cost of that telephone  
13 service would have been forwarded to me  
14 or depending on the rules in the state,  
15 you know -- power pretty much if you  
16 don't use your power, you don't pay for  
17 it so there wouldn't be any need for  
18 reimbursement for something I didn't incur  
19 from that But just an example, a  
20 telephone, if it was out of service for,  
21 you know, ten days, then I would  
22 anticipate credit of ten days' worth of  
23 service, monthly charges

24 Q So the utility would lose money in that  
25 event?

26 (Pages 249 to 252)

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1 A I can't speak for if it would lose money  
2 or not I don't know what you mean by  
3 lose money I mean --  
4 Q Maybe to put it better they would forego  
5 getting money from you because of the  
6 interruption of service?  
7 A For the ten days --  
8 MR MEZA Object to the form  
9 A In my example for the ten days that they  
10 didn't provide the service, they wouldn't  
11 have recovered money for the service that  
12 it did not provide  
13 Q Are you familiar with the rates that  
14 Petitioners pay to BellSouth for using  
15 services and elements?  
16 A I'm familiar there's a large list of  
17 unbundled network element rates in  
18 attachment 2 that reference the rates that  
19 you would pay -- or the Joint Petitioners  
20 would pay for using the services they buy  
21 out of this agreement, so, yes  
22 Q How are those rates derived, in your  
23 understanding?  
24 A From the UNE cost proceedings in the  
25 different states or there could be some

1 Q Would they be -- Would the rates charged  
2 to the customer be equal to the rates paid  
3 to BellSouth?  
4 MR MEZA Object to form  
5 A I don't know I mean, CLECs have all  
6 sorts of creative pricing they could  
7 charge exactly what they're paying us for  
8 that service I mean it varies across  
9 the board I would imagine any competent  
10 CLEC would charge rates to recover all  
11 their costs, and I would assume they have  
12 more costs than just the UNE rates they're  
13 paying BellSouth  
14 But again back to regardless of  
15 whatever they're charging their end user  
16 for providing that service, I would think  
17 their same limitation of liability would  
18 be whatever that end user pays them for  
19 that service  
20 Q The situation that you described where you  
21 suffered an interruption of service, I  
22 think your term was ten days let's say  
23 A Uh-huh  
24 Q And you say you didn't pay for those ten  
25 days of service because you didn't get the

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1 rates in there that were negotiated  
2 between the parties that were not arrived  
3 at through commission activity  
4 Q For the rates that a commission set is  
5 there any standard by which the rates  
6 would have been set?  
7 A The TELRIC standard that was set forth in  
8 the Act and the FCC rules sets forth the  
9 TELRIC methodology Again the states  
10 made some deviations and tweakings to the  
11 resulting rates they arrived at through  
12 those proceedings, made adjustments to the  
13 inputs we provided, et cetera that  
14 impacted the outcome of those rates  
15 Q Would you expect that Petitioners' rates  
16 that are imposed on a customer for the  
17 services they provide would enable --  
18 strike that -- would be less than the  
19 cost that they pay to BellSouth?  
20 MR MEZA Object to the form  
21 A Would the rates Joint Petitioners charge  
22 their end users be less than the rates  
23 they pay BellSouth for that service?  
24 Q Yes  
25 A I would not think so

1 service  
2 A Uh-huh  
3 Q Is that a common result in the utility  
4 industry, that someone would not pay when  
5 their service is interrupted?  
6 A On the retail side of our business, we're  
7 bound by various and sundry state  
8 commission service quality measures that  
9 dictate what we have to do in regards to  
10 out of service and you know what type of  
11 reimbursement we give or credits we give  
12 back for when service is, you know,  
13 interrupted or -- depending on the  
14 duration, so it varies in all states but  
15 it's very common amongst incumbent LECs  
16 I don't believe the CLECs are quite as  
17 bound by some of those same rules as the  
18 incumbents are It varies amongst the  
19 states  
20 Q But the practice of giving refunds or  
21 abatement of charges is a practice that  
22 occurs in the telecommunications  
23 industry?  
24 A I mean, as I just said, it's depending on  
25 whatever the state commission rules are

27 (Pages 253 to 256)

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1 regarding the incumbent LECs like  
2 BellSouth. are obligated to do, we do  
3 Whether it's an appropriate  
4 practice in today's world with competition  
5 is another matter but I think you'll find  
6 very clear that we don't think it is an  
7 appropriate practice and I think  
8 competition in the market should dictate  
9 the level of service that customers pay  
10 for, but, again, that's another matter

11 Q Yes unfortunately

12 A Unfortunately

13 Q Is it possible that a problem that occurs  
14 with an element or service that a  
15 Petitioner gets from BellSouth could cause  
16 an interruption in service provided to the  
17 customer for 30 days?

18 MR MEZA Object to the form  
19 A I mean that's almost exactly the same  
20 question you asked me a minute ago Could  
21 it cause an interruption or suspension of  
22 service, yes, it could And, hence, the  
23 duration or whatever could be based on the  
24 severity of what happened Again, the  
25 answer is the same The limitation of

1 A We would not charge you for -- In that  
2 30-day example, if you were paying \$10 for  
3 that loop, we would not charge you ten  
4 days for that loop And that would be  
5 based on limitation of liability for the  
6 cost of the service that we failed to  
7 provide and that would be the cost of the  
8 service, what we charged to you or would  
9 have charged to you

10 Q And how is that relief that you just  
11 described as provided here related to the  
12 harm that the Petitioner would incur  
13 through not getting paid for 30 days?

14 A Well it's related to the harm of you not  
15 receiving the service we were supposed to  
16 be providing you That's the harm you  
17 didn't get the service BellSouth was  
18 providing the Joint Petitioner, and that's  
19 what we're compensating for is that  
20 harm You didn't get that loop for 30  
21 days or whatever we're giving you a  
22 credit for the cost of that loop for 30  
23 days That's the harm You didn't have  
24 that loop, so we're not going to make you  
25 pay for that loop That's the example

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1 liabilities that the CLECs would have with  
2 their end users should protect them from  
3 any beyond what they're paying us for the  
4 service I mean, they would not be liable  
5 for beyond what their end user is paying  
6 them for

7 Q But the interruption could last 30 days?

8 A Anything's possible, a hurricane I mean  
9 look at Florida You know, how long was  
10 that -- out of service was, I don't know  
11 but yes

12 Q So if the practice in the industry of  
13 providing abatements or refunds of rates  
14 for interrupted service applied to a  
15 30-day outage is it possible that a  
16 carrier would not get paid for that 30  
17 days of service?

18 A Sure If they had a requirement to refund  
19 or credit their end user for the period of  
20 time they were out of service they would  
21 not get that money for that service during  
22 that time period

23 Q And if that happened to a Petitioner the  
24 30-day problem, what relief would the  
25 Petitioner get under BellSouth's language?

1 Q And let's go back to page 38 of the  
2 November 12th testimony which is Exhibit  
3 No 2

4 A Okay

5 Q And you state at lines 19 to 22 that the  
6 language proposed by the Petitioners would  
7 provide incentive to the Joint Petitioners  
8 to inappropriately delay the filing of a  
9 claim or inappropriately argue that,  
10 quote the day the claim arose was at the  
11 end of the agreement Do you see that?

12 A Yes

13 Q On what do you base this understanding?

14 A Well, I think this day the claim arose  
15 language was a slight twist on the  
16 original language that was proposed, and I  
17 don't think it changes the whole intent  
18 my understanding of what you're asking for  
19 -- the Joint Petitioners are asking for  
20 They could -- The day the claim  
21 arose would be the day you told us you  
22 have a claim And you could say the claim  
23 -- you know I'm claiming today that for  
24 the last six months, you did something  
25 wrong And you could wait on the last day

28 (Pages 257 to 260)

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1 of the contract -- not saying the Joint  
2 Petitioners would but that, in essence,  
3 could be the effect of this language --  
4 could wait until the last day of the  
5 contract and say, okay you've never  
6 provided me this function or you  
7 improperly provided this function  
8 therefore you owe me 7-1/2 percent of  
9 everything I've billed up until the day  
10 before the contract ends and that's how  
11 we're interpreting the impact of the Joint  
12 Petitioners' language

13 Q And you think that could happen?

14 A Sure it could based on 7-1/2 percent of  
15 what's been billed I mean, if you file a  
16 claim the first day, nothing's been  
17 billed, so 7-1/2 percent of zero is zero  
18 so there's no damage If you wait as many  
19 as two years down the road, three years  
20 down the road and file that claim, you'd  
21 have X number of dollars, millions of  
22 dollars or whatever billed since the first  
23 date of the contract, 7-1/2 percent of  
24 that is quite substantial

25 Q If a dispute arose about liability and

1 claim arose We didn't know about it  
2 before then, would be that day going  
3 forward

4 Q Is that the meaning that you think  
5 Petitioners have assigned to that phrase?

6 MR MEZA Object to form

7 A That's based on what I've read in the  
8 Joint Petitioners' testimony and their  
9 position on this issue That's the way,  
10 I'm understanding their position what  
11 they meant

12 Q Did you participate in negotiations on  
13 this language?

14 A No, I don't believe we discussed this in  
15 any of the summits to any degree so no

16 Q Have you ever asked a Petitioner to  
17 explain what they mean by the phrase the  
18 day the claim arose?

19 A I have not no But from reading their  
20 testimony it's still not clear what they  
21 really meant, so I would have expected it  
22 would have been clear in their testimony

23 Q Do you think that the day the claim arose  
24 could have a meaning other than what you  
25 have discerned from reading the testimony?

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1 Petitioners sought to enforce this  
2 provision as they've written it, this 7 5  
3 percent liability --

4 A Uh-huh

5 Q -- do you think that a court or state  
6 commission could be involved in resolving  
7 that dispute?

8 A Depending on whatever the dispute  
9 resolution procedures are we resolve or  
10 result in from this proceeding would  
11 dictate how those disputes would be  
12 handled

13 So if it goes back to the state  
14 commission or the FCC to resolve, did it  
15 get resolved there or if it was deferred  
16 or handled by -- that decision got  
17 deferred to a court it could be handled  
18 there so

19 Q What is your understanding of the phrase  
20 "the day the claim arose"?

21 A My understanding of that is when you  
22 brought the claim to our attention You  
23 filed a claim a dispute said I'm  
24 claiming that this happened That would  
25 be whatever day that happened is when the

1 MR MEZA Object to form

2 A I'm sure it could But, again, the plain  
3 reading of the term the day the claim  
4 arose -- and, again, if it's in the  
5 contract with those terms, that's the way  
6 we're reading it and why we're in  
7 objection to the Joint Petitioners'  
8 language along with the 7-1/2 percent of  
9 that too

10 Q You stated that this phrase the day the  
11 claim arose has been newly proposed by  
12 the Petitioners since this arbitration was  
13 filed

14 A Yes

15 Q Is that your understanding?

16 A Yes and I reference that in footnote 11  
17 on page 38 that initially it was 7-1/2  
18 percent of whatever has been billed in  
19 total since the beginning of the  
20 agreement

21 Q Has anyone communicated to you the reason  
22 that the Petitioners proposed this new  
23 language?

24 A I think they thought that would solve our  
25 concern about delaying it until some point

29 (Pages 261 to 264)

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1 way down the road of the agreement. But  
2 in our reading, it doesn't. It still puts  
3 it at the time that is of the choosing of  
4 the Joint Petitioners as to when they  
5 would -- the claim would arise.  
6 Q On page 39 of this testimony, you state at  
7 lines 12 and 14, these are not commercial  
8 agreements but are instead interconnection  
9 agreements mandated under sections 251 and  
10 252 of the 1996 Act. Do you see that?  
11 A Yes.  
12 Q What is the difference between a  
13 commercial agreement and an  
14 interconnection agreement under this  
15 statement?  
16 A A commercial agreement would be one that  
17 the parties can choose to enter into or  
18 not. In an interconnection agreement, we  
19 cannot choose to not enter into an  
20 interconnection agreement. We are bound  
21 by 251 and 252 to negotiate in good faith  
22 and reach agreement on providing  
23 interconnection UNEs pursuant to 251 and  
24 252. We can't choose the rates we  
25 charge. The terms and conditions are

1 Q Is there any other reason that a  
2 commercial agreement is different from an  
3 interconnection agreement other than the  
4 regulatory aspects that you've described?  
5 A Well, I think that's a pretty broad  
6 difference. Rates, terms, conditions, and  
7 prices pretty much cover and -- are  
8 agreements. I mean, are the basis for  
9 agreements of what the parties agreed to.  
10 And if one party is bound to provide  
11 something pursuant to mandated rates,  
12 terms, and conditions, it's not a  
13 voluntary agreement. I mean, I see a  
14 commercial agreement in the context of  
15 something we can choose to do or not do.  
16 In the context of an  
17 interconnection agreement, we don't have  
18 that luxury. We don't have that choice.  
19 We're obligated and ordered to provide  
20 these services pursuant to these terms and  
21 conditions.  
22 Q In your experience dealing with  
23 interconnection agreements, do they  
24 contain provisions that are not mandated  
25 under section 251 or 252 of the Act?

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1 pretty much set based on the law and the  
2 mandate from the Act and the FCC's orders.  
3 Q Is BellSouth engaged in commerce?  
4 MR. MEZA: Object to the form.  
5 A By "commerce," you mean generating  
6 revenues and monies in exchange, buying  
7 goods and services?  
8 Q Well, I suppose. What is your  
9 understanding of the word "commercial"?  
10 A Well, my understanding of the word  
11 commercial in the context of commercial  
12 agreement -- and commercial means it's not  
13 a regulated, it's a commercial practice.  
14 You can go to buy a car from anybody you  
15 want, you can enter into some agreement  
16 for somebody to repair your roof or -- a  
17 contractor to repair your roof. But you  
18 know, I'm not bound. There's not a roofer  
19 out there that's bound to provide me  
20 service based on certain requirements that  
21 we can't change or we're bound to be  
22 providing them to the Joint Petitioners.  
23 So to me, a commercial agreement is free  
24 from the obligation set forth in 251 and  
25 252.

1 A There may be some things in there that,  
2 for administrative ease and just basic,  
3 you know, how to operate, how the parties  
4 interact, those type of things maybe on  
5 there just to help effectuate those  
6 obligations that are required by 251 and  
7 252.  
8 Q Is there anything in sections 251 or 252  
9 that discuss liability terms in an  
10 interconnection agreement?  
11 A Not that I recall from my review of  
12 section 251, but, again, the whole  
13 instance of having an interconnection --  
14 I mean, having an interconnection agreement  
15 memorializes what we're obligated to  
16 provide you, the rates, terms, and  
17 conditions that go along with that in  
18 order for us to comply with those  
19 requirements.  
20 Q Do those sections obligate BellSouth to  
21 have a limitation of liability clause in  
22 its interconnection agreement?  
23 MR. MEZA: Object to the form.  
24 A I don't believe they do, but we'd be  
25 pretty -- not real smart to not have it.

30 (Pages 265 to 268)

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1 in there  
2 Q Why?  
3 A Well it's a parity I mean we're the  
4 provider of the service Again it's --  
5 the parity is what we do with our retail  
6 end users I mean it's, to me standard  
7 practice for a party to limit their  
8 liability other than gross negligence,  
9 willful misconduct, and all those other  
10 you know caveats between their end user  
11 or the person they're providing the  
12 service to  
13 Q The next paragraph on this page 39 --  
14 A Uh-huh  
15 Q -- lines 16 to 21  
16 A Yes  
17 Q Specifically I refer to the first line  
18 that states, BellSouth is asking no more  
19 than the industry standard limitation Do  
20 you see that?  
21 A Yes  
22 Q What did you mean by "industry standard  
23 limitation"?  
24 A Well, it's -- we've had our  
25 interconnection agreements out there since

1 commercial agreement but I believe it was  
2 referenced in the context of some of the  
3 TRO voluntarily negotiated agreements, you  
4 know as one of the means by which the  
5 Interim Rules could be overwritten if you  
6 will, the parties enter into it  
7 voluntarily negotiate them Didn't use  
8 the term commercial, but in the context of  
9 this, commercial is voluntary as  
10 discussed before  
11 Q Has the FCC described commercial  
12 agreements other than that they're  
13 voluntary?  
14 A I can't speak to everything the FCC's ever  
15 said  
16 Q If you could turn the page, please, to  
17 page 40  
18 A Uh-huh  
19 Q Lines 6 to 7  
20 A 6 and 7 uh-huh  
21 Q State that Petitioners are attempting to  
22 have BellSouth incur the Petitioners' cost  
23 of doing business Do you see that?  
24 A Yes  
25 Q What did you mean by that statement?

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1 '96 '97 This language -- Our same  
2 standard liability language has been in  
3 those agreements with all the other CLECs  
4 that are out there It's standard in our  
5 retail tariffs in relationships with  
6 the -- our end-user customers, and I  
7 believe it's standard in the Joint  
8 Petitioners' tariffs and contracts that  
9 they have with their end-user customers  
10 Q So you're referring to the  
11 telecommunications industry?  
12 A Yes Yes Sorry  
13 Q Do commercial agreements that BellSouth  
14 has contain limitation of liability  
15 clauses?  
16 MR MEZA Object to form  
17 A I would imagine they do I can't speak  
18 for every commercial contract we have out  
19 there commercial agreement or --  
20 depending on what it is what it does but  
21 I would assume it does It's pretty  
22 standard  
23 Q Has any state commission or the FCC  
24 defined what a commercial agreement is?  
25 A I don't know if they've defined the term

1 A This answer is in the context of an  
2 overall providing general comments about  
3 issues 4 through 7 which are your  
4 limitation of liability, indemnification,  
5 consequential damages, et cetera, in  
6 switching, indirect and -- and in that  
7 regard in the context of all those  
8 together it's our opinion that, based on  
9 their language relative to all those  
10 issues it could put BellSouth in a  
11 position of having to bear the risk and  
12 the cost of the business decision the  
13 Joint Petitioners make relative to what  
14 they promise to their end users  
15 Q This issue is about what happens if there  
16 is a problem within an element or service  
17 provided by BellSouth to Petitioners  
18 isn't that right?  
19 MR MEZA Object to form  
20 A G-4 is but this particular issue on the  
21 bottom of 39 is what I was talking  
22 generally about, issues 4 through 7  
23 encompasses indemnification and the rest  
24 of those issues  
25 Q What about Petitioners' position on Issue

31 (Pages 269 to 272)

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1 G-4 specifically indicates that  
2 Petitioners are attempting to have  
3 BellSouth incur the Petitioners' cost of  
4 doing business?  
5 A Well I don't -- I wasn't specifically  
6 pointing this just to G-4 It was  
7 generally in the context of -- probably  
8 more this particular reference was  
9 associated with the indemnification aspect  
10 of all these issues And the fact that,  
11 based on your indemnification language,  
12 which, in our opinion guts the liability  
13 -- limitation of liability language so  
14 from that way if we get your  
15 indemnification language -- if you get  
16 your indemnification language you  
17 basically just null and void the  
18 limitation -- our limitation language  
19 Q But is it your position that -- with  
20 respect to G-4 that the 7 5 percent  
21 liability rate that Petitioners have  
22 proposed is attempting to have BellSouth  
23 incur the Petitioners' cost of doing  
24 business?  
25 A Well, I guess you could say if you were

1 provided  
2 Back to the loop scenario We  
3 didn't provide you the loop, so you don't  
4 pay us for that loop  
5 Q Is it your position that Petitioners seek  
6 language that would entitle them to 7 5  
7 percent of what they bill their end  
8 users?  
9 A No, what BellSouth has billed, but for  
10 other things beyond just that loop that we  
11 failed to provide you, would be what  
12 it -- 7-1/2 percent of anything billed to  
13 the Joint Petitioners would cover all the  
14 services that are billed under this  
15 agreement, is the way we're reading your  
16 language  
17 Q And what in the language at page 9 of  
18 Exhibit 12 --  
19 A Exhibit 12 Okay Sorry  
20 MS JOYCE Can we go off the  
21 record?  
22 (DISCUSSION OFF THE RECORD )  
23 Q At page 41 of your November 12th  
24 testimony --  
25 A Yes

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1 going to charge us 7-1/2 percent of  
2 everything that's been billed that isn't  
3 directly related to the service we failed  
4 to provide or improperly provided, we're  
5 basically giving you more money than the  
6 risk or the consequences of the failure  
7 So I guess it could be -- you  
8 could see that as a cost of doing  
9 business, but you don't have a revenue  
10 stream by getting 5-1/2 -- or 7-1/2  
11 percent of everything that's been billed  
12 by filing a claim That isn't  
13 compensatory  
14 Q When could it happen that Petitioners  
15 would seek 7 5 percent of amounts billed  
16 where a problem had not occurred?  
17 A Well I --  
18 MR MEZA Object to form  
19 A I'm not saying you would do that when a  
20 problem didn't occur It's our position  
21 that the 7-1/2 percent of the billed is  
22 beyond the consequences of the failure  
23 Q Why do you think that?  
24 A Because you're only out what you -- what  
25 we didn't provide or we improperly

1 Q -- at lines 11 to 27 --  
2 A Yes  
3 Q -- you provided a quote Can you explain  
4 to me what this quote is?  
5 A This is out of the Virginia Verizon order  
6 that was arbitrated before the FCC back in  
7 2002 paragraph 709, that basically  
8 WorldCom had contended that it needed you  
9 know, more protection, I guess, or  
10 liability indemnification from Verizon,  
11 and this is the FCC's decision in that,  
12 that basically said that they don't --  
13 Verizon is not obligated to provide  
14 perfect service and -- pretty much speaks  
15 for itself  
16 Q Why did you include this quote in your  
17 testimony?  
18 A Why did I? Because I think it speaks to  
19 the issue that's here in Issue 4 and then,  
20 actually 4 through 7 as far as  
21 indemnification and that we shouldn't have  
22 to do more than we do for our own retail  
23 customers, which if you put BellSouth's  
24 name where Verizon is and Joint  
25 Petitioners where WorldCom is, I think the

32 (Pages 273 to 276)

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1 outcome would be the same  
2 Q Do you think that the North Carolina  
3 Commission must in this arbitration,  
4 follow the finding that appears in this  
5 quote?  
6 A No, and I wasn't addressing it from the  
7 standpoint of has the FCC addressed this  
8 matter and this is where we found that  
9 they've addressed So, I mean they can  
10 give it whatever weight they do with any  
11 other FCC decision  
12 Q At page 40 of your November 12th  
13 testimony, lines 12 to 13  
14 A Yes  
15 Q You state that BellSouth is bound by the  
16 cost-based pricing standard of the 1996  
17 Act and cannot change such prices at  
18 will --  
19 A Uh-huh  
20 Q -- to cover the additional costs that  
21 would be incurred should the Petitioners'  
22 language be adopted Do you see that?  
23 A Yes, I do  
24 Q Do you believe that Petitioners want  
25 BellSouth to change prices at will?

1 that we failed to provide or improperly  
2 provide  
3 Q And how would 7 5 percent of the amounts  
4 billed be an open-ended liability  
5 provision?  
6 MR MEZA Object to the form  
7 A Well I don't think that just 7-1/2  
8 percent -- To me it's beyond the risk  
9 that we anticipated when the UNE rates  
10 were developed You get back to that the  
11 value of the risk in our minds and the way  
12 the UNE rates were done were based on the  
13 cost of the service or function we failed  
14 to provide, which was -- 7-1/2 percent of  
15 total bill would be more than the cost of  
16 the service that we failed to provide  
17 Q But would that 7 5 percent of the total  
18 cost billed be open ended?  
19 A Well, not in and of itself but in the  
20 context with the indemnification language  
21 that the Joint Petitioners are proposing  
22 in essence, in our opinion guts any  
23 limitation of liability we have We  
24 wouldn't have any  
25 Q So taken together they're open-ended?

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1 A I don't think I was inferencing that they  
2 do The purpose of this sentence was in  
3 the case -- based on the fact that the  
4 interconnection agreement is not a  
5 commercial agreement and the rates have  
6 been dictated to us for those elements  
7 that we're obligated to provide by the  
8 state commissions consistent with the  
9 pricing standards So the fact that those  
10 rates -- how those rates were established  
11 did not encompass the costs associated  
12 with open-ended liability indemnification  
13 which is in the context of Issues 4  
14 through 7  
15 Q Taking together in your opinion, Issues  
16 G-4 through G-7 as Petitioners' phrase  
17 them would create open-ended liability?  
18 A It's our reading of the language based  
19 when you take it in context with the  
20 indemnification language and how it cuts  
21 the limitation liability and the fact  
22 that, you know, 7-1/2 percent of -- you  
23 know forget the indemnification, 7-1/2  
24 percent of what's been billed, that's a  
25 big increase from the individual element

1 A Yes  
2 Q Meaning there would be no limit to the  
3 BellSouth -- liability BellSouth could  
4 suffer?  
5 A That's our interpretation, yes  
6 Q Please turn to Exhibit 3 which is your  
7 November 19th testimony  
8 A Okay  
9 Q At line 13 of page 23  
10 A Okay  
11 Q Is it your position or understanding that  
12 the liability language in this agreement  
13 will apply to both parties?  
14 A The term parties is I believe inherent  
15 in the language as it relates to  
16 liability, but given the fact that  
17 BellSouth is typically the one providing  
18 the service in this agreement we're the  
19 ones that would be most impacted if not  
20 solely impacted by a limitation of  
21 liability or lack of limitation of  
22 liability between the parties  
23 Q Do you not believe that it could happen  
24 that under this agreement the Petitioners  
25 would owe BellSouth something under the

33 (Pages 277 to 280)



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1 liability provision?  
2 A It's possible that there could be  
3 something, but I think the majority of it,  
4 as far as, you know -- when I mean  
5 one-sided, it means more in favor of one  
6 than the other which in our opinion and  
7 reading since we're the provider of the  
8 services -- the main provider of the  
9 services under this agreement we'd be the  
10 ones that would have the most risk of not  
11 having limitation of liability  
12 Q But BellSouth could obtain relief under  
13 the liability clause?  
14 A I'm not an attorney I don't know if --  
15 whatever legal thing we could do pursuant  
16 to limitation of liability and again,  
17 pursuant to the dispute resolution or  
18 whatever we could claim  
19 Q But BellSouth could under the language,  
20 make a claim for liability under the  
21 proposed -- or under this section of the  
22 agreement?  
23 A I'm sure, yeah -- I mean, it's either  
24 party But, again, the intent was -- the  
25 one-sided was predominantly geared towards

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1 the fact that we were the main provider of  
2 the services under this agreement  
3 Q When the Joint Petitioners purchase  
4 services or elements from BellSouth --  
5 A Uh-huh  
6 Q -- under an agreement --  
7 A Uh-huh  
8 Q -- are they retail customers of BellSouth?  
9 A No I believe -- This is a wholesale  
10 agreement -- considered a wholesale  
11 agreement by BellSouth providing wholesale  
12 services  
13 Q What would the relevance be to  
14 Petitioners' retail tariffs in that  
15 instance?  
16 A What would be the relevance to the  
17 Petitioners' retail tariffs in -- I mean,  
18 this agreement is between BellSouth and  
19 the Joint Petitioners and the limitation  
20 of liability is between BellSouth and the  
21 Joint Petitioners Whatever the Joint  
22 Petitioners use those services they obtain  
23 from us or those elements to provide  
24 service to their end users they can seek  
25 those same protections and limitation of

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1 liability in their relationship with their  
2 end users I'm not sure --  
3 Q Would they get that protection separately  
4 -- with their end users separately from  
5 BellSouth?  
6 A Yes It would be in their relationship  
7 with the services they provide to their  
8 end user  
9 Q And in the Petitioner and end-user  
10 relationship that you just mentioned --  
11 A Uh-huh  
12 Q -- would the end users then get relief  
13 from Petitioners if a problem happened  
14 with their service?  
15 A Depending on what their tariffs or their  
16 contracts provided, the provisions set  
17 forth in those And if they had no  
18 limitation of liability set forth and they  
19 had no indemnification, then you know,  
20 that kind of gets back to our whole issue  
21 with indemnification -- the Joint  
22 Petitioners' indemnifications If they're  
23 not there to be -- always indemnified, the  
24 Joint -- the end user is going to bypass  
25 them and come to BellSouth, another

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1 issue But they have full ability and  
2 right and they have it in their current  
3 agreements and contracts to limit their  
4 liability with their end users, which is,  
5 again, standard practice in the industry  
6 All the tariffs that are out there with  
7 incumbent LECs and their end users,  
8 BellSouth's tariffs contain that  
9 limitation of liability  
10 Q So to the extent that the relationship  
11 between Petitioners and end users --  
12 A Uh-huh  
13 Q -- allows for end users to get some kind  
14 of relief from where would the end user  
15 get that relief?  
16 MR MEZA Object to form  
17 A It would be whatever are the provisions  
18 between the Joint Petitioners and their  
19 end users set forth in their tariffs or  
20 contracts  
21 Q Let's turn to Issue G-5, which is --  
22 we'll first deal, I guess, in November  
23 12th testimony  
24 As a general matter, Issue G-5  
25 can you explain to me what the subject

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1 matter of Issue G-5 is?  
2 A G-5 pertains to if the Joint Petitioners  
3 choose not to include limitation of  
4 liability in their end-user contracts or  
5 tariffs who should bear the risk  
6 resulting from that decision?  
7 Q So is it fair to say that this issue is  
8 about what the Petitioners put in their  
9 agreements and tariffs?  
10 A Well it's more about what they put in  
11 there or what they don't put in there. If  
12 they put something in there this is not  
13 an issue. They've got something in there  
14 so they must have been intending to take  
15 it out of there. I'm not sure why this is  
16 an issue.  
17 Q How in your opinion is BellSouth  
18 impacted by the agreements that  
19 Petitioners make with their end users?  
20 A We should not be impacted by the agreement  
21 the Joint Petitioners make with their end  
22 user. This agreement sets forth the  
23 provisions and the requirements for  
24 BellSouth providing -- provided under this  
25 agreement to the Joint Petitioner, not to

1 install something on the date we promise  
2 Then if they fail to do that and that  
3 failure is caused because we failed to  
4 install that loop on the day we promised  
5 to the Joint Petitioners which in turn  
6 didn't allow them to deliver it to their  
7 end user based on the language that is  
8 being proposed by the Joint Petitioners  
9 we don't -- the Joint Petitioners could  
10 possibly come back to BellSouth and say  
11 okay. I'm out \$1,000 because I had to give  
12 it to my end user because I missed the due  
13 date. And that's what we're trying to  
14 prevent.  
15 Q By what process could the Petitioner come  
16 back to BellSouth and ask for that relief?  
17 A It could say we violated the agreement or  
18 would resort -- we referenced the  
19 language that -- if your language is in  
20 the agreement the Joint Petitioners'  
21 limitation of liability language is in  
22 there and you don't have a -- the Joint  
23 Petitioners don't have limitation of  
24 liability in their tariffs, they could, in  
25 turn -- again associate it back with the

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1 their end user  
2 Q At page 42 of your November 12th  
3 testimony  
4 A Uh-huh  
5 Q Do you have that?  
6 A Yes  
7 Q At line 10 -- or I guess to use the full  
8 quote, it begins at line 8 and continues  
9 to line 11, but you use the phrase "expect  
10 BellSouth to pay"  
11 A Yes  
12 Q What do you mean by that?  
13 A Well, the effect of the Joint Petitioners'  
14 language and position on not including  
15 limitation of liability, if there's no  
16 such limitation in their relationship with  
17 their end user then they could look to  
18 BellSouth for indemnifying them for that  
19 nonperformance to their end user in turn  
20 back down the next Q -- question and  
21 answer below that talks about an example  
22 -- I'll bet -- hopefully hypothetical  
23 that if the Joint Petitioners offer  
24 something that says they -- you know,  
25 we'll give you \$1,000 if we fail to

1 indemnification that we'd have to  
2 indemnify them as the receiver of the  
3 service, which is contrary to BellSouth's  
4 position.  
5 Q You've also testified that it's possible  
6 that an end user could come to BellSouth  
7 and demand relief?  
8 A Based on the Joint Petitioners' language  
9 Q How would that process happen?  
10 A They could file a suit. I mean, I don't  
11 know legally how they could go about --  
12 go to court, file something saying we  
13 caused them damage because they wouldn't  
14 have any ability if the Joint Petitioners  
15 didn't have this in their contract of  
16 liability -- limitation of liability in  
17 their contract, they could say well, you  
18 know BellSouth's the underlying provider,  
19 I'm going to go after them.  
20 Q Do you know if there's a federal statute  
21 that would support such a claim by an end  
22 user?  
23 A I have no idea on the merits of the  
24 claim. I mean that would be I guess  
25 addressed on an individual case basis.

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1 Q Other than the interconnection agreement,  
2 what would give the Petitioner the right  
3 to come to BellSouth and say there is a  
4 failure, it cost me money and now you owe  
5 me money?

6 MR MEZA Object to the form  
7 A I don't know what other legal avenues they  
8 may have outside of the interconnection  
9 agreement Anybody can sue anybody for  
10 anything these days So I'd say  
11 whatever's at their disposal

12 Q Do you believe that there is anything in  
13 the Joint Petitioners' proposed language  
14 for this issue -- or rather, the proposed  
15 language for section 10 4 2?

16 A Do I have that?

17 Q I'm referring to your testimony --

18 A I'm trying to --

19 Q -- for Issue G-5

20 A Okay I'm sorry, ask your question  
21 again

22 Q Is it your understanding that Petitioners'  
23 proposed language for the provision of the  
24 agreement regarding limitation of  
25 liability states that an end user will

1 choose not to, then we went some  
2 protection that would prevent that end  
3 user from being able to come to BellSouth  
4 to seek that claim

5 Q Can you please look at your November 19th  
6 testimony which is Exhibit 3?

7 A Uh-huh

8 Q At page 25

9 A 25?

10 Q 25

11 A Okay

12 Q And at lines 24 to 25 you state that it  
13 is unclear why this is even an issue  
14 unless of course the Joint Petitioners  
15 intend to remove such provisions

16 A Yes

17 Q Do you believe that Joint Petitioners  
18 intend to remove liability provisions in  
19 their contracts?

20 A I'm not saying one way or the other what  
21 they might intend, what they may do in the  
22 future I mean, they could and that's  
23 essentially what we're attempting to  
24 prevent, the consequences if they do

25 MS JOYCE I think this is a good

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1 have the right to sue BellSouth for  
2 relief?

3 MR MEZA Object to form  
4 A Not directly as related to Issue 5 but it  
5 could be the consequences of Issue 5, if  
6 Joint Petitioners did not have the  
7 limitation of liability in their contract  
8 and, again, coupled with indemnification  
9 provisions or proposed language there  
10 would be nothing to stop, in our opinion,  
11 based on the Joint Petitioners' language  
12 their end user coming after BellSouth for  
13 those damages claims

14 Q But does Petitioners' language expressly  
15 provide that an end user can sue  
16 BellSouth?

17 A Not relative to again, G-5 but without  
18 some type of limitation of liability  
19 between the Joint Petitioners and their  
20 end users to me that could be the  
21 practical result

22 I mean, we're not dictating that  
23 they have to have this language in their  
24 contract -- in their tariffs or contract,  
25 limitation of liability but if they

1 time to stop for lunch

2 MR MEZA Okay  
3 (LUNCH RECESS )

4 BY MS JOYCE

5 Q Good afternoon Ms Blake

6 A Good afternoon

7 Q Let's turn to your November 12th  
8 testimony, which is Exhibit 2

9 A Uh-huh

10 Q At page 43

11 A Okay

12 Q I'm sorry, page 44

13 A Uh-huh

14 Q And you state at lines 12 through 13 on  
15 this page again, the result is that the  
16 agreed-upon limitation of liability would  
17 be eviscerated Do you see that?

18 A Yes

19 Q What did you mean "eviscerated"?

20 A Well my understanding of the Joint  
21 Petitioners' petition -- proposed  
22 language, as it relates to this issue,  
23 which is 10 4 4, of -- well besides  
24 having a lot of words to me it gets to  
25 the bottom of that it would pretty much

36 (Pages 289 to 292)

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1 relieve them of any obligation -- the  
2 Joint Petitioners of any obligation to be  
3 sued by their end users. And by removing  
4 them out of that role it would basically  
5 enable the Joint Petitioners' end users to  
6 bypass the Joint Petitioners and sue  
7 BellSouth, which we do not have a  
8 limitation liability against your end  
9 users in that regard because our agreement  
10 is with the Joint Petitioners, that that  
11 liability is with the Joint Petitioners  
12 and BellSouth.  
13 Q This testimony on page 44 you provided  
14 this in response to Issue G-6. Isn't that  
15 right?  
16 A Yes.  
17 Q And the statement provided here on page 43  
18 for Issue G-6 is, how should indirect,  
19 incidental, or consequential damages be  
20 defined for purposes of the agreement?  
21 A Uh-huh.  
22 Q What is your understanding of what  
23 indirect damages are?  
24 A Something that's not direct.  
25 Q Can you think of an example in the

1 damages different from direct damages?  
2 A I mean I guess an incidental damage could  
3 be a direct damage, which is -- which  
4 would be indirect. I mean I don't know.  
5 Again I'm not an attorney. There's legal  
6 definitions of these that BellSouth is  
7 attempting to just let those definitions  
8 prevail.  
9 Q Can you please pick up Exhibit 12?  
10 A Yes.  
11 Q Which is the portion of the agreement --  
12 A Uh-huh.  
13 Q You have it in front of you?  
14 A I've got it.  
15 Q And the relevant section of this section  
16 is 10 4 4.  
17 A Correct.  
18 Q And do you believe that 10 4 4 regards  
19 direct damages under this agreement?  
20 A The --  
21 MR MEZA: Object to form. Go  
22 ahead.  
23 A The Petitioners' language or this --  
24 Q Let's start with BellSouth's language.  
25 A Okay. I mean, BellSouth's proposed

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1 relationship between BellSouth and  
2 Petitioners, what would be a type of  
3 indirect damage?  
4 A Something from your end user to BellSouth  
5 being done.  
6 Q Is there any other type of indirect that  
7 you can think of?  
8 A Not that I can think of.  
9 Q And what is your understanding of the term  
10 incidental damages?  
11 A Something that kind of -- define it  
12 without using the term. Sort of a  
13 byproduct or -- not -- I mean it's kind  
14 of somewhat similar to indirect. It's not  
15 directly attributable to or just kind of  
16 happens infrequently. Incidental means  
17 it's not -- I don't know.  
18 I mean to me as I said, I think  
19 all these are legal terms that are very  
20 well known. In my understanding of  
21 the -- whatever state law contradicts or  
22 constrains these terms to mean is what  
23 BellSouth is proposing should be in the  
24 agreement, and probably should be defined  
25 Q In your understanding, are incidental

1 language has said that either party shall  
2 be liable for direct -- indirect --  
3 excuse me -- incidental, or  
4 inconsequential damages except in the case  
5 of gross negligence, willful or  
6 intentional misconduct.  
7 Q So having read that, do you think this is  
8 about direct damages?  
9 A It appears to be limited to indirect and  
10 inconsequential and incidental -- or  
11 incidental and consequential -- sorry --  
12 damages.  
13 Q Do you have an understanding as to what  
14 consequential damages are?  
15 A From a layman's concept of -- you know,  
16 the damages resulting from the  
17 consequences -- some consequences.  
18 Q The consequence of some conduct?  
19 A Yeah, or some act that would have caused  
20 the damages to happen, yes.  
21 Q Could it be the consequence of an event?  
22 MR MEZA: Object to form.  
23 A I mean I would guess the consequences  
24 pretty much of anything unless it's  
25 specifically excluded by these terms as

37 (Pages 293 to 296)

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1 they're defined or typically understood  
2 Q All right Now, I'd like you to look at  
3 the Petitioners' version of language for  
4 section 10.4.4  
5 And my understanding is that  
6 language that is in bold in these drafts  
7 indicates that it is disputed language?  
8 A That is correct  
9 Q I'd like you to focus on the bold  
10 language please  
11 A Okay  
12 Q What in this language that is bolded would  
13 eviscerate a limitation of liability?  
14 A Well, of course, the way I'm reading this  
15 bolded language and the intent, as we're  
16 interpreting it in this bolded language,  
17 pretty much would exclude -- eliminate the  
18 limitation of liability that may have  
19 existed elsewhere in the agreement, in  
20 that if the Joint Petitioners' end user  
21 was seeking damages, then they could come  
22 to BellSouth to satisfy those claims  
23 Q And which words or phrases in this bolded  
24 language leads you to that conclusion?  
25 A Provided that neither the foregoing or any

1 MR MEZA Same objection  
2 A I don't know  
3 Q At page 45 in your November 12th  
4 testimony lines 19 to 21 -- do you have  
5 that?  
6 A At page 45?  
7 Q Yeah  
8 A Uh-huh  
9 Q You state that it makes no sense, however  
10 for the Petitioners to agree that there  
11 should be no liability for these types of  
12 damages  
13 And by "these types of damages",  
14 do you refer to indirect, incidental, and  
15 consequential damages?  
16 A Yes  
17 Q And then you continue, it makes no sense  
18 for them to try to alter the legally  
19 operative terms?  
20 A Yes  
21 Q Is that what it says?  
22 A Uh-huh  
23 Q And what did you mean by "try to alter the  
24 legally operative terms"?  
25 A Well, what I meant by that is some of the

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1 other provision exception shall be deemed  
2 or construed as imposing any limitation of  
3 a liability to a party. I mean, just go  
4 on --  
5 Q The whole thing  
6 A The whole thing in its context. I mean,  
7 there's a hundred or so words in that one  
8 long sentence  
9 Q Do you know what the phrase or term  
10 reasonably foreseeable means?  
11 MR MEZA Object to the form  
12 A Something you would expect. I guess, or  
13 Q Do you know if the term reasonably  
14 foreseeable has a particular legal  
15 significance?  
16 A No, I don't  
17 MR MEZA Object to the form  
18 THE WITNESS Sorry  
19 Q Can an indirect damage be foreseeable?  
20 MR MEZA Object to the form  
21 A I don't know  
22 Q Can an incidental damage be foreseeable?  
23 MR MEZA Same objection  
24 A Same answer  
25 Q Can consequential damages be foreseeable?

1 unbolded sets forth a provision that the  
2 parties understand that -- like in this  
3 same paragraph. And then the bolded terms  
4 pretty much sets, you know -- sets all  
5 these other caveats in place that, in our  
6 opinion, eviscerates the previous  
7 provisions that the parties agreed to. I  
8 mean, it sets forth conditions that, if  
9 they're existing, then forget what I just  
10 said, it doesn't apply. I mean, in those  
11 terms, not what I just said. But what the  
12 previous language says, if these things  
13 happen, then, you know, all bets are off  
14 and you're liable  
15 Q And is that what you meant when you used  
16 the term eviscerates?  
17 A Yes. Gutted basically  
18 Q Gutted?  
19 A Gutted  
20 Q Also on page 45, you have a discussion at  
21 lines 3 to 11  
22 A Yes  
23 Q And you state that the term  
24 indemnification has a particular legal  
25 meaning, and you go on to say it is not so

38 (Pages 297 to 300)

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1 well defined that one can simply place  
2 language in a contract and have both  
3 parties know precisely what is expected of  
4 them?  
5 A That's what it says, yes  
6 Q What did you mean by, it is not so well  
7 defined that one can simply place it in a  
8 contract?  
9 A Well I think the next sentence goes on  
10 basically to explain that, that it's  
11 necessary to set forth who indemnifies who  
12 and under what conditions or circumstances  
13 they'll be indemnified  
14 In the contrary on indirect and  
15 incidental and consequential damages, I  
16 think it's very clearly defined what those  
17 type of damages are  
18 Q As to indemnification are there any  
19 standards that you're aware of regarding  
20 the specifics of who is indemnifying whom?  
21 A I'm not sure you -- that I could say that  
22 there are standards I mean, my  
23 understanding of indemnification would be  
24 who's indemnified held harmless for their  
25 actions, and under what conditions I'm

1 the topic  
2 Q Beginning at line 9 on page 45, you state  
3 that, in contrast, the issue of what  
4 constitutes consequential damages is a  
5 purely legal issue that is defined in  
6 every state by a body of case law that has  
7 evolved over a long period of time Do  
8 you see that?  
9 A Yes  
10 Q What did you mean by "purely legal issue"?  
11 A I think all three of those terms  
12 indirect, inconsequential -- I can't say  
13 that word -- incidental,  
14 inconsequential -- gosh it's so hard --  
15 indirect, incidental, and consequential  
16 damages those types of damages are  
17 defined and I think it's purely a legal  
18 term in the gist of you know contract  
19 negotiation or disputes and how the  
20 parties abide by those contracts  
21 Q Where are those three terms defined?  
22 A In every state by a body of case law I  
23 imagine there's state laws out there that  
24 define under what conditions certain  
25 damages are appropriate or not I mean, I

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1 not sure if there's --  
2 Q Is there any principle to govern what is  
3 an appropriate specifics -- or specific  
4 about indemnification contract?  
5 A I mean, I don't know I'm not sure this  
6 answers the question as far as the  
7 principle but in the context of this  
8 intraconnection agreement and the fact  
9 that BellSouth is the provider of the  
10 service, that it should be indemnified and  
11 held harmless by the receiver of those  
12 services  
13 Q And on what does BellSouth base its  
14 position on indemnification in this  
15 arbitration?  
16 MR MEZA Object to form  
17 A I think probably the long history of  
18 having interconnection agreements and our  
19 relationship with CLECs and having  
20 these -- I mean, it's pretty much the  
21 standard language we've had in our  
22 interconnection agreements since the  
23 beginning and it has worked well and it  
24 hasn't -- I'm not sure the need for the  
25 insertion of language that only confuses

1 don't have any specific examples  
2 Q Did you read any case law about  
3 consequential, indirect, or incidental  
4 damages?  
5 A No I didn't  
6 Q Do you know whose state's law will govern  
7 disputes under this agreement?  
8 A I'm not certain but I believe it's either  
9 Georgia law because the preamble starts  
10 this is entered into pursuant to Georgia  
11 law, or it could be the laws of the actual  
12 state that the services are being provided  
13 in so I'm not certain  
14 Q Will this agreement be performed in all of  
15 the BellSouth region states?  
16 A Will this agreement be performed? Are we  
17 entering into an agreement with all nine  
18 of the BellSouth states?  
19 Q Yes  
20 A Yes this is a nine-state agreement Yes  
21 Q Will the verbiage of the agreement change  
22 from one state to another?  
23 A It could, depending on the outcome of this  
24 issue in the arbitration The state could  
25 determine a different approach, may accept

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1 your language in one state and ours in  
2 another state or they could tweak it  
3 altogether I mean, it's the impact part  
4 of arbitration  
5 Q Do you believe that the body of case law  
6 in each state will govern the agreement as  
7 performed in that particular state?  
8 MR MEZA Objection to form  
9 A I don't know I'm not  
10 Q At page 46 of this testimony --  
11 A Uh-huh  
12 Q -- at lines 3 to 5 --  
13 A Yes  
14 Q -- you state that BellSouth is also  
15 opposed to the, quote, qualifying close  
16 quote, language proposed by the  
17 Petitioners because it is extremely vague  
18 and would be extremely difficult to  
19 implement Do you see this?  
20 A Yes  
21 Q Why do you believe the qualifying language  
22 is extremely vague?  
23 A Well, I mean, again, being not an attorney  
24 and reading you know the long sentences,  
25 you know it's 12 lines long that has been

1 A I don't believe it was I'm not sure if  
2 there's continuing dialogue between the  
3 negotiators and the Joint Petitioners  
4 relative to that or not  
5 Q Why would it have not been acceptable?  
6 A Well, I think prior to where it ends still  
7 adds some convolution into it as far as  
8 qualifiers that in our opinion aren't  
9 necessary and eviscerate the whole  
10 limitation of liability  
11 Q Aside from getting rid of this proposed  
12 language --  
13 A Uh-huh  
14 Q -- is there any way to make it  
15 appropriately clearer for BellSouth's  
16 purposes?  
17 A I mean I think it's very clear when you  
18 say in the previous -- first part of that  
19 before the unbolding the part that  
20 starts except in the cases of gross  
21 negligence -- I mean, it's neither --  
22 under no circumstances shall a party be  
23 responsible or liable for indirect,  
24 incidental, consequential damages.  
25 period

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1 inserted and that is in dispute, and it's  
2 provided that this happens, nor any other  
3 provision construed to be imposing claims  
4 concurred by the end users or -- to the  
5 extent such damages result directly or in  
6 a reasonable foreseeable manner from the  
7 first party's performance service  
8 hereunder, and were not -- or are not  
9 directly or proximately caused -- I mean  
10 it just seems to go -- okay, where are we  
11 when we get to the end of that bolded  
12 sentence? That seems very confusing and  
13 I'm not sure what it's actually saying at  
14 the end of the day  
15 Q Would it be more clear if it were shorter?  
16 A It will be more clear if it wasn't there  
17 and it's consistent with BellSouth's  
18 language  
19 Q Are you aware whether Petitioners offered  
20 to shorten this disputed language?  
21 A Yes I believe you -- the Joint  
22 Petitioners offered to end the sentence  
23 after hereunder which is kind of in the  
24 middle of the bolded paragraph  
25 Q Was that offer acceptable?

1 I mean, to qualify it with these  
2 other little caveats of, you know, unless  
3 some end user comes forth later and claims  
4 damages, then they could possibly come  
5 back to BellSouth and seek those damages  
6 Q Please turn to page 53 of this testimony  
7 A Okay  
8 Q And beginning at line 13 on this page you  
9 state that in an attempt to resolve this  
10 issue --  
11 And I believe this is a different  
12 issue --  
13 A Uh-huh  
14 Q -- from that that we're discussing right  
15 now in G-6  
16 A Yes  
17 Q -- BellSouth has offered to include the  
18 following language in the general terms  
19 and conditions of the parties' agreement  
20 Do you see that?  
21 A Yes I do  
22 Q By my count there are 119 words in this  
23 language Do you accept that roughly  
24 that's the case?  
25 A Subject to sitting here and counting them.

40 (Pages 305 to 308)

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1 I'll take your word for it  
2 Q Why isn't this language convoluted and  
3 extremely difficult?  
4 A I think you've got to read the words for  
5 what they mean in this language I mean.  
6 it's easy to follow I mean whether it's  
7 just me or not I get lost in the language  
8 that we were talking about previously  
9 relative to different caveats or  
10 qualifiers as to, you know when those  
11 type damages will not apply relative to  
12 the earlier language  
13 I mean this clearly sets out by  
14 -- somebody disagrees that the language  
15 is clear that there's some other law that  
16 applies, then they take, you know, steps  
17 A, B and C I mean it's very laid out  
18 If this happens, then that happens  
19 I mean again, it may just be my  
20 lay man's reading of this provision, but I  
21 think the result is it totally guts the  
22 limitation of liability  
23 Q Is BellSouth's principle objection to  
24 Petitioners' proposed language for section  
25 10 4 4 that it's more than a hundred words

1 Q Can you opine on the legal effects of  
2 including damages for reasonably  
3 foreseeable harm?  
4 A No, I cannot  
5 Q I believe we're still on page 46 of your  
6 testimony -- oh, excuse me, go back to  
7 46  
8 A I thought we were through to 53  
9 Q Okay And this begins testimony for Issue  
10 G-7, is that right?  
11 A Okay Yes  
12 Q And at line 22 on this page --  
13 A Uh-huh  
14 Q -- you state the parties appear to agree?  
15 A Yes  
16 Q And does that indicate that the parties  
17 agree on points one and two in the  
18 preceding paragraph?  
19 A That reference the parties appear to agree  
20 that the party receiving service should  
21 indemnify the party providing service from  
22 one -- because that's consistent in the  
23 proposed language  
24 But as I go on to say they also  
25 want to be indemnified as the receiver of

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1 long?  
2 A No The objection is that it's  
3 unnecessary language and it qualifies  
4 previously very clear, laid out terms and  
5 conditions that aren't appropriate  
6 Q Why would a clause that held an entity  
7 liable for reasonably foreseeable damages  
8 eviscerate a limitation of liability  
9 clause?  
10 MR MEZA Object to the form  
11 A Well, the intent of this -- the language  
12 that's set forth in this paragraph is to  
13 set forth that neither party would be  
14 responsible or liable for these types of  
15 damages and then trying to attempt to  
16 further qualify those damages down to you  
17 know unless the damage is from their end  
18 user is the way I read this then that  
19 could undo the fact -- or that could set  
20 another qualifier that now they're liable  
21 for that  
22 Q Is that your policy perspective?  
23 A That's my attempt to interpret the  
24 Petitioners' language that's in here and  
25 what the impact would be

1 the service, as well  
2 Q I'm sorry, as those two -- as to those  
3 two points, is it your position that the  
4 parties agree?  
5 A Yes, the parties agree that the party  
6 receiving the service should then  
7 indemnify the party providing the  
8 service And then from there it would  
9 fall apart  
10 (DEPOSITION EXHIBIT NO 13 WAS MARKED )  
11 Q I'm handing you a document marked Exhibit  
12 13  
13 MR MEZA Thanks  
14 Q Do you recognize this document?  
15 A Yes  
16 MS JOYCE For the record, I'll  
17 state it's an excerpt of a document  
18 Q And what is this document?  
19 A This is an excerpt of the Joint  
20 Petitioners' refiled rebuttal testimony in  
21 North Carolina filed last Friday December  
22 3rd  
23 Q And if you could turn to the second page  
24 of this exhibit  
25 A Yes

41 (Pages 309 to 312)



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1 Q Do you see the testimony for Issue G-7 is  
2 provided there?  
3 A Yes I do  
4 Q And at line 9 to 10 on this page states,  
5 please state your position with respect to  
6 Item 7. Issue G-7 Do you see that?  
7 A Yes  
8 Q So would you agree that the testimony that  
9 follows this question represents  
10 Petitioners' statement position on Issue  
11 G-7?  
12 A Yes This speaks to -- The first  
13 sentence pretty much speaks to the  
14 agreement we have that the party providing  
15 the service shall be indemnified by the  
16 party receiving the service And then the  
17 following term additionally on line 14  
18 gets into the second -- the bottom of my  
19 page 46 where I was discussing, however,  
20 they also contend that the party receiving  
21 the service should be indemnified by the  
22 party providing the service the exact  
23 opposite  
24 Q Can you tell me what in this paragraph at  
25 pages 11 to 19 and that continue on to the

1 my testimony that we're looking at  
2 Q Do you believe that the position was  
3 stated differently in the direct testimony  
4 that the Petitioners filed?  
5 A It could have been I mean, without  
6 looking at it -- I mean again looking  
7 back at the -- and it may have been I  
8 over -- you know I think both parties  
9 agree that the party receiving the service  
10 should indemnify the party providing the  
11 service  
12 And maybe beyond that the other  
13 qualifiers weren't as explicitly laid out  
14 in both parties' language I mean, this  
15 thing's evolved  
16 Q On page 3 of Exhibit 13  
17 A Page 3?  
18 Q Which is marked 36 on the bottom  
19 A Okay  
20 Q It's the --  
21 A I got it  
22 Q -- transcript testimony excerpt  
23 A I got it Okay  
24 Q At lines 5 to 6 --  
25 A Uh-huh

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1 next page indicates that Petitioners agree  
2 with what you provide as point two in your  
3 testimony on page 46, any claim, loss or  
4 damage claimed by the end user of the  
5 party receiving services arising out of  
6 the agreement?  
7 A I guess I would read it in line 12, the  
8 party receiving services against any claim  
9 for libel slander, invasion of privacy  
10 arising from the content of the receiving  
11 party's own communication  
12 Q Okay That language appears on page  
13 17 -- line 17 through 19 on page 46 as  
14 point one Do you see that?  
15 A Yes  
16 Q Do you see language in this paragraph in  
17 Exhibit 13 that comports with your point  
18 two in your testimony at lines 19 to 20?  
19 A Again I mean I would have to look at the  
20 direct testimony that I was rebutting and  
21 understanding I don't see it  
22 specifically in here, but whether it was,  
23 like I said previously, in another  
24 position statement or in their direct  
25 testimony for which I was rebutting it in

1 Q -- states the Joint Petitioners seek to be  
2 indemnified for claims of libel slander,  
3 or invasion of privacy On that, the  
4 parties agree  
5 A Yes I see that  
6 Q Would you take the statement to apply to  
7 point one on page 46 or point two?  
8 A Well I mean point one but it could be  
9 that because of their claim of libel,  
10 slander, or invasion of privacy, it  
11 results in some other claim or loss or  
12 damage claimed by the end user -- I mean,  
13 one could lead to the other I mean, I  
14 don't know  
15 Q Looking at this exhibit do you know  
16 whether Petitioners have provided any  
17 position that comports with your point two  
18 on page 46 of your testimony?  
19 A Whether they agree that the party  
20 receiving service should indemnify the  
21 party providing the service from any claim  
22 by their end user? I think that -- I  
23 mean, again by extension of linking the  
24 claim loss or damage for libel or slander  
25 over to just any generic claim, I

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1 don't think -- I think, you know, the main  
2 difference is who should indemnify who for  
3 what I mean, that seems to be the  
4 purpose of trying to get some language in  
5 here that the parties agree to and under  
6 what conditions

7 Q Can there be a claim under this section of  
8 the agreement for something other than  
9 libel, slander, or invasion of privacy?

10 A Are you looking specifically at -- I'm  
11 sorry I don't -- I'm not sure I follow  
12 you this language you're talking about

13 Q Just generally under the section of the  
14 agreement that we're discussing, can there  
15 be a claim somebody lodges for something  
16 other than libel, slander, or invasion of  
17 privacy?

18 A Well, if our language is accepted,  
19 couldn't have a claim from an end user I  
20 mean, the Joint Petitioners' end user  
21 should not be allowed to seek damages from  
22 BellSouth

23 Q But aside from the party that could lodge  
24 the complaint, what kind of grounds of a  
25 complaint could there be other than libel,

1 for service?

2 A Because they're entering into an  
3 interconnection agreement for BellSouth to  
4 provide the services that they're  
5 obtaining from us I mean, that's the  
6 intent of the agreement is to set forth  
7 the terms and conditions and rates for  
8 which we would provide elements services,  
9 functions to the Joint Petitioners

10 Q And based on what Joint Petitioners  
11 purchase from BellSouth, will they provide  
12 service to customers?

13 A I would believe that would be their  
14 intent is to take what they purchase from  
15 us and provide telecommunication service  
16 to their end users

17 Q So in part, in serving customers, would  
18 Joint Petitioners be dependent on  
19 BellSouth?

20 A We're a supplier of the Joint Petitioners,  
21 if you want to look at it in that regard  
22 We don't have a direct relationship with  
23 their end users, hence, this need for this  
24 indemnification Our relationship is with  
25 the Joint Petitioners They have a

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1 slander, or invasion of privacy?

2 A Well I think they could all -- you know  
3 I think an end user could, you know, claim  
4 that they suffered damage or loss because  
5 they received the service from the Joint  
6 Petitioners in this case, and that  
7 shouldn't be allowed I mean, I can't  
8 tell you anything beyond the first claim  
9 I mean, we're trying to preclude the  
10 second part of that from being --

11 Q Could there be a claim for degradation of  
12 service?

13 A I mean I think anybody can make a claim  
14 for anything Whether it's got any merit  
15 or what grounds it gets raised -- I mean,  
16 I don't know I mean I would just be  
17 speculating

18 Q Under this agreement would the  
19 Petitioners be relying on BellSouth for  
20 service?

21 A Yes I mean under this agreement we are  
22 the provider of the service, and I think  
23 the Joint Petitioners acknowledge that in  
24 this excerpt you have here

25 Q And why would they be relying on BellSouth

1 relationship -- again, come back to the  
2 limitation of liability -- with their end  
3 users And if they choose not to limit  
4 their liability or to not be indemnified  
5 with their end users then, you know,  
6 that's their prerogative

7 But our relationship in the  
8 provision of this contract is with the  
9 Joint Petitioners And as a provider of  
10 the service, you know, we should be  
11 indemnified for providing the service to  
12 the Joint Petitioners

13 Q But will Joint Petitioners' service in  
14 part be dependent on BellSouth?

15 A It depends on what services they're  
16 offering to their end users If they use  
17 the elements that they purchase out of  
18 this agreement, could be They could get  
19 services from elsewhere another provider,  
20 a division of themselves

21 Q If indeed, they use elements or services  
22 purchased under this agreement to serve a  
23 customer, would Petitioners' service be  
24 dependent on BellSouth?

25 A It could be, yeah Sure

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1 Q Ms Blake, your testimony states that you  
2 have a bachelor's degree in business  
3 management, is that correct?  
4 A Yes  
5 Q Do you have any postgraduate degrees?  
6 A No, I do not  
7 Q Have you ever appeared as a cost witness  
8 for BellSouth?  
9 A No, I have not  
10 Q Do you have a background in cost analysis?  
11 A No, I do not  
12 Q At page 48 of your testimony, if you could  
13 please turn to that, and this is the  
14 Exhibit 2 November 12th testimony  
15 A Okay  
16 Q At lines 2 to 3 you state that TELRIC  
17 pricing does not include the cost of  
18 open-ended indemnification of the party  
19 receiving services. Do you see that?  
20 A Yes, I do  
21 Q What, in your opinion, does TELRIC pricing  
22 include?  
23 A I mean, there's a whole principle around  
24 TELRIC pricing and it's to do with forward  
25 looking cost, to do with our labor costs

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1 I mean, there's all aspects of costs  
2 providing a service or element  
3 Again, at the time our TELRIC  
4 prices -- our existing UNE prices were  
5 established, we didn't have such  
6 indemnification language as proposed by  
7 the Joint Petitioners. Any cost at the  
8 time those TELRIC studies were done or  
9 cost studies were done in order to support  
10 those rates that we have in place today  
11 that would have been based on BellSouth's  
12 indemnification, not open-ended, as the  
13 Joint Petitioners' language would bring us  
14 to, if we had their language. So the  
15 costs that were built into the cost  
16 studies would be based on the environment  
17 at the time that those cost studies were  
18 done  
19 Q So existing TELRIC rates are based in part  
20 on BellSouth's cost of indemnification at  
21 the time?  
22 A Would be what our experience is at the  
23 time, of how we're providing services, and  
24 how those services were provided. It went  
25 in to develop the cost for that service

1 Q And on what basis do you conclude that the  
2 costs of indemnification are included in  
3 TELRIC?  
4 MR MEZA: Object to form  
5 A My basis for saying that the costs of  
6 indemnification are included in TELRIC?  
7 Q Yes  
8 A Because it would be, again, my  
9 understanding -- not being TELRIC or cost  
10 witness, would be you would have to  
11 account for how we provide and provision  
12 that service  
13 And in the context of that, it  
14 would be whatever those cost inputs are as  
15 they exist at the time, and, of course,  
16 with TELRIC, it's forward looking and  
17 whatever forward looking efficient  
18 networks would look like, and all that  
19 would play into the inputs there. But if  
20 we didn't have in existence  
21 indemnification language or exposure that  
22 is being proposed here, there's no way it  
23 could have been included two years ago  
24 when we did cost studies  
25 Q So is it your testimony that there are

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1 some costs of indemnification that are  
2 included in TELRIC?  
3 A I can't say that specifically, just the  
4 basis of the way we operated and the way  
5 it worked -- what governed these contracts  
6 and how the parties conducted business  
7 Q Have you read any state commission orders  
8 setting TELRIC rates?  
9 A Yes  
10 Q In which states?  
11 A Probably all nine states  
12 Q And to your recollection, do those orders  
13 discuss the costs of indemnification?  
14 A I don't recall that I've ever seen that  
15 particular terminology used in there: cost  
16 input, nonrecurring charges, labor,  
17 overhead. I mean, it could be there's  
18 some component in there: legal costs,  
19 risks, et cetera, whatever goes into our  
20 cost studies overhead  
21 Q Will all of the services and elements that  
22 will be provided under this agreement be  
23 set at TELRIC?  
24 A Not necessarily. If the parties agree to  
25 something other than Commission-approved

44 (Pages 321 to 324)

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1 rates, which is possible there could be  
2 some elements that either the commission  
3 has not set a rate on that could be  
4 included in the agreement  
5 Q Would they be market-based rates?  
6 A Not necessarily. It could be something  
7 that came about after the particular state  
8 did the cost proceeding and we didn't  
9 offer. Like CLEC to CLEC conversions was  
10 something we didn't do or didn't have a  
11 process for back when the UNE dockets were  
12 done. We've since developed that  
13 capability or that process, and we did a  
14 cost study, and I believe we did it  
15 compliant with whatever that state ordered  
16 as the TELRIC. There could be other  
17 things that are not -- if they're not  
18 obligations, then, you know, our position  
19 is it does not have to be at TELRIC. It  
20 could be at a negotiated rate or some  
21 other rate based on another principle.  
22 Q Why would BellSouth say that particular  
23 item would not have to be at TELRIC?  
24 A Again, it could be something that we're  
25 not obligated to do and just for

1 Q Why not appropriate?  
2 A Well, I can't -- you know, without  
3 looking at specifically our comments  
4 relative to that issue. I haven't been  
5 that involved in it, but realizing -- I  
6 mean, what most of the states did in the  
7 UNE cost proceedings was take what we  
8 thought was compliant with TELRIC  
9 principles and maybe made some  
10 adjustments, which may or may not have  
11 been appropriate in our eyes.  
12 Q Were the resulting rates too low, in  
13 BellSouth's opinion?  
14 A I would say there are elements that the  
15 rates are too low and they're not  
16 appropriately covering our costs.  
17 Q Will some of the services or elements that  
18 the Joint Petitioners will purchase under  
19 this agreement be set at rates that are in  
20 a BellSouth tariff?  
21 A There are some references to tariffs in  
22 here for certain elements. I know there's  
23 an issue we've resolved as to what rates  
24 would apply in certain trouble  
25 determination type situations that we've

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1 administrative case we put it in the  
2 agreement when we started negotiating or  
3 put it in our standards, you know, make it  
4 all available, but realizing the direction  
5 with the whole Interim Rules Order and the  
6 final rules and how things are going to be  
7 -- obligations under 251, whether there  
8 will be separate obligations or offerings,  
9 if you will, not obligations in a  
10 commercial agreement will pretty much try  
11 and bifurcate those and keep the  
12 interconnecting clean with obligations  
13 that we're required to provide pursuant to  
14 251, and then non-obligations if you  
15 will, in a separate agreement that would  
16 not be dictated by TELRIC rates.  
17 Q Does BellSouth believe that TELRIC rates  
18 are too low?  
19 MR MEZA: Object to the form.  
20 A I think BellSouth has made it known,  
21 probably in its filings with the FCC  
22 regarding TELRIC principles and the MPR  
23 ethernet, assume from that that it does  
24 not agree that the TELRIC is the  
25 appropriate standard. And, again --

1 already resolved and that you reference a  
2 tariff.  
3 MS JOYCE: Let's go off the  
4 record.  
5 (DISCUSSION OFF THE RECORD)  
6 BY MS JOYCE:  
7 Q Can you think of any network element that  
8 will be purchased under this agreement out  
9 of a BellSouth tariff?  
10 A A network element that we're obligated to  
11 provide pursuant to 251?  
12 Q No, just a piece of the network, not a  
13 UNE, but a network element.  
14 A I can't think of any offhand. I mean,  
15 there's, like I said, references to  
16 tariffs that may be a function or a --  
17 but not -- no.  
18 Q Who sets tariff rates?  
19 A The owner of the tariff puts forth the  
20 rates that they feel are appropriate to be  
21 charged. Depending on the jurisdiction  
22 for which it's filed in, different things  
23 may happen. A state commission may have  
24 to approve the tariff. We may have to  
25 file cost studies to support that it's

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1 just and reasonable Same with the FCC  
2 tariffs  
3 Q So for rates that are in a BellSouth  
4 tariff they were set by BellSouth?  
5 A We would have BellSouth personnel conduct  
6 some type of study or a product manager or  
7 market manager that may come up with, you  
8 know what's the rate we want to charge  
9 for this, depending on the regulation and  
10 requirements relative to the service with  
11 the price regulation plan and all those  
12 aspects of the retail side of the world  
13 Q And do those personnel set the rates in  
14 accordance with TELRIC principles?  
15 A No they do not  
16 Q Do you know what principles they use?  
17 A No, I do not  
18 Q For a network element that is both --  
19 strike that  
20 Is it ever the case that the rate  
21 of an element in a tariff is higher than  
22 the rate for that same element under  
23 TELRIC?  
24 A Sure  
25 Q At page 48 of your November 12th

1 functions in this agreement pursuant to  
2 251 in the FCC rules and cannot dictate  
3 the terms and conditions and the risks and  
4 that aspect of it  
5 Q Please look at Exhibit 12 which is the  
6 general terms and conditions  
7 A Okay  
8 Q Section 11.1, which appears at page 13  
9 A Okay  
10 Q And here there is a version of language  
11 proposed by Petitioners and then a version  
12 by BellSouth, is that right?  
13 A Yes  
14 Q This language proposed by BellSouth do  
15 you know how it was derived?  
16 A I believe we probably had input from our  
17 folks within BellSouth that deal with  
18 trademark infringements and intellectual  
19 property and received some input based on  
20 experience and past disputes and what  
21 situations have arisen in the past  
22 Q So it's based on BellSouth's personnel  
23 experience in trademark law?  
24 A I'm sure our attorney that deals with  
25 disputes or complaints or claims that

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1 testimony --  
2 A Uh-huh  
3 Q -- lines 7 to 8, you state that  
4 Petitioners' reliance upon commercial  
5 agreements is misplaced Do you see that?  
6 A Yes  
7 Q And why do you take that position?  
8 A Well I believe in the Joint Petitioners'  
9 testimony they were discussing that you  
10 know BellSouth should concur that -- you  
11 know be able to change their prices if  
12 you will to cover any increased risk of  
13 the indemnification or limitation of  
14 liability language that the Joint  
15 Petitioners are proposing  
16 And while we could do that in a  
17 commercial agreement could charge a  
18 higher rate if we so choose because we're  
19 assuming a higher risk we can't do that  
20 with an interconnection agreement  
21 Q And why not?  
22 A For all the reasons we discussed earlier,  
23 an interconnection agreement is not a  
24 voluntary agreement We're obligated to  
25 provide those services and elements

1 somebody's violated the use of our logo or  
2 trademark provided input into what  
3 language we feel is appropriate to protect  
4 ourselves  
5 (DEPOSITION EXHIBIT NO 14 WAS MARKED )  
6 Q I'm handing you a document marked Exhibit  
7 14  
8 A Uh-huh  
9 Q Do you recognize this document?  
10 A Yes I do  
11 Q Can you tell me what it is?  
12 A It is a request -- first request for  
13 production of document Item G-8-1.  
14 BellSouth's response  
15 Q How is it that you recognize this  
16 document?  
17 A I've seen it I've seen a copy of the  
18 filed responses we did to the Joint  
19 Petitioners' interrogatories and  
20 production of documents  
21 Q Did you have any input on this response?  
22 A No, I did not Huh-uh, not this  
23 particular one  
24 Q Did you participate in negotiations on the  
25 trademark section of this agreement?

46 (Pages 329 to 332)

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1 A No. I did not Remember having  
2 discussions during one of the summits  
3 about trading one issue for another  
4 relative -- it may have been one of these  
5 issues, but not specifically the language  
6 Q And based on what information did you  
7 write your testimony on Issue G-8  
8 regarding trademarks?  
9 A Most of it is based on the language we  
10 proposed, and the basis for that language  
11 is, like I said, from our experience in  
12 any past disputes and how to try to  
13 prevent any confusion of what would be a  
14 violation of you know using our logo,  
15 trademark, et cetera and in talking with,  
16 like I said, our attorney that supports --  
17 is primarily involved in this and any of  
18 the other disputes or incidences that may  
19 have arisen in the past that we claimed  
20 somebody was violating our trademark  
21 Q And directing your attention to Exhibit  
22 14 --  
23 A Uh-huh  
24 Q -- it states here that the request is,  
25 provide all documents in which BellSouth

1 document that Petitioners received in  
2 response to RFP G-8-1?  
3 A I'm not sure I can say for sure I don't  
4 know if there's any supplemental  
5 responses but if anything else has been  
6 found that would be compliant or  
7 responsive to the request, I don't know  
8 Q Looking at Exhibit 14 the last paragraph  
9 on the page  
10 A 14, okay  
11 Q The one page  
12 A Okay  
13 Q Do you see anything that indicates that  
14 BellSouth has other documents other than  
15 this Exhibit 15?  
16 A Not that I can tell from the response  
17 provided here I mean excerpts whether  
18 they're posted some other places, I mean,  
19 I don't know  
20 Q And prior to your seeing the document that  
21 has been marked as 15 --  
22 A Uh-huh  
23 Q -- when it was put together in this  
24 arbitration have you ever seen any of  
25 these pages before?

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1 discusses, explains, adopts, or refers to  
2 a policy regarding BellSouth's use of a  
3 CLEC's name service mark, logo, and/or  
4 trademarks Do you see that?  
5 A Yeah  
6 Q And at the bottom of the page, the last  
7 sentence states that the attached document  
8 provides excerpts from BellSouth's  
9 internal filed notices, policies  
10 announcements and employee  
11 communications which do address  
12 infringement and the use of third-party  
13 intellectual property Do you see that?  
14 A Yes  
15 (DEPOSITION EXHIBIT NO 15 WAS MARKED )  
16 Q I'm handing you a document marked Exhibit  
17 15 Do you recognize this document?  
18 A I may have looked through it or just seen  
19 it in the whole stack of stuff  
20 Q Do you know whether it was given to  
21 Petitioners together with Exhibit 14, that  
22 page?  
23 A It would have been in the attachment to  
24 Item G-8-1, yes  
25 Q And would you accept that this is the only

1 A I haven't seen -- I mean, it's not  
2 ringing a bell that I've seen these exact  
3 pages, but the concept as far as being  
4 posted over a copy machine, you know  
5 don't copy things that have been  
6 copyrighted, and those type of general  
7 policy stuff that would be prohibited by  
8 copyright law and those type of things  
9 compliance-type guidelines that we have to  
10 go through each year to make sure we're  
11 complaint with things  
12 Q So are these pages posted within  
13 BellSouth's offices in your experience?  
14 A These particular ones came from an  
15 intranet site that employees would have  
16 either access to through some type of a  
17 intranet website, if they needed to know  
18 what we could do relative to copyright or  
19 using somebody else's trademark or  
20 Q Do you think that these pages reflect a  
21 policy regarding use of a CLPs or CLECs  
22 trademark?  
23 A I mean if a CLP is included in the term  
24 others -- I mean, this is talking about  
25 using the trademark or intellectual

47 (Pages 333 to 336)

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1 property of others other than BellSouth  
2 they could be included in that context  
3 Q Do you know who wrote these pages?  
4 A No. I do not  
5 Q On page 13 of Exhibit 12 the general  
6 terms and conditions --  
7 A Yes  
8 Q Quite a lot to juggle I understand  
9 A Okay I'm sorry, you've backed up to 12"  
10 Q Yeah We're on the general terms and  
11 conditions  
12 A Okay  
13 Q Section 11 I  
14 A Yes  
15 Q Why is the language that Petitioners have  
16 proposed that is bolded here unacceptable  
17 to BellSouth?  
18 A Well, again, based on our experience in  
19 the past of some confusion I guess,  
20 relative to the proper use of BellSouth's  
21 logos and trademarks it's BellSouth's  
22 position that inclusion of this clarifying  
23 language and information you know, will  
24 help avoid future disputes just laying it  
25 out as opposed to just the general terms

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1 about applicable law  
2 Q Does BellSouth believe that Petitioners  
3 are unwilling to comply with applicable  
4 law?  
5 A No  
6 Q To your knowledge has any of the  
7 Petitioners -- have any of the  
8 Petitioners violated the applicable law  
9 for trademarks with BellSouth?  
10 A I'm not sure I could say for sure I know  
11 some of the Joint Petitioners were  
12 previously other companies in the past,  
13 started as one company and changed their  
14 name a couple of times and now they're  
15 called a name by -- Joint Petitioners  
16 so -- but I can't say that forever  
17 anybody -- none of them have ever done  
18 anything that we don't think is  
19 appropriate for using our logo I don't  
20 know I mean, again, I don't know I  
21 don't think so, but  
22 Q A quick question with respect to Exhibit  
23 15  
24 A Uh-huh  
25 Q On the second page of this exhibit -- or

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1 the third page that's marked 00002 on the  
2 bottom  
3 A This is the second page, yeah Uh-huh  
4 Q There's a sentence that says if you  
5 become aware of any possible infringement,  
6 either against BellSouth or against  
7 another company by a BellSouth employee,  
8 please contact B-I-P-M-A-N, BIPMAN  
9 immediately Do you see that?  
10 A Yes  
11 Q What is BIPMAN?  
12 A I think I know what the BIP part stands  
13 for I'm not sure what the MAN part  
14 stands for BellSouth Intellectual  
15 Property -- I don't know what the MAN part  
16 stands for, probably some organization  
17 within our BIPCO organization that manages  
18 our trademark  
19 Q And what is BIPCO?  
20 A BellSouth Intellectual Property Company, I  
21 think  
22 Q Is that --  
23 A Go ahead  
24 Q Is that an entity that deals with  
25 trademark issues on behalf of BellSouth?

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1 A I'm not sure exactly how -- its corporate  
2 linkage, if it's a part of BellSouth, if  
3 it's a separate affiliate or company that  
4 owns the trademark -- owns the marks and  
5 the logos -- BellSouth's marks and logos  
6 I'm not sure of its corporate structure in  
7 relationship  
8 Q On page 49 of your November 12th testimony  
9 at the bottom of the page, page 49  
10 A Okay  
11 Q Lines 24 to 25  
12 A Uh-huh  
13 Q It says, it only makes sense to utilize  
14 this experience to try to proactively  
15 avoid as many disputes as possible Do  
16 you see that?  
17 A Yes  
18 Q How will BellSouth's proposed language for  
19 section 11 I avoid as many disputes as  
20 possible?  
21 A I mean it's our opinion if it's spelled  
22 out here as far as, you know, what the  
23 marks -- how they can use -- and make  
24 factual references, they can't use the  
25 same font you know, it has to be in plain

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1 font non-logo-type use Whereas if it  
2 just had your language and it's not  
3 spelled out clear, the appropriate use of  
4 those marks and logos, one could think  
5 that that's acceptable under applicable  
6 law And I don't think it is So it's  
7 just more clarifying, expanding based on  
8 our experience Whether it will lessen  
9 the number of disputes I guess time will  
10 tell  
11 Q On what basis do you derive your opinion  
12 about what's a proper use of a logo?  
13 A I think BellSouth has a pretty specific  
14 logo as far as the Bell symbol and the  
15 bell and the big capital S, you know  
16 those -- whatever the logo -- trademark  
17 logo is You know, it's our position that  
18 needs to be you know -- needs to be in  
19 plain text and not using our logo It's  
20 not like the Coca-Cola emblem If you're  
21 going to compare advertising, Coke -- for  
22 Coke you'd use the name Coke or Pepsi or  
23 whatever Ours is the same way you just  
24 use the term BellSouth We're not saying  
25 we're not going to allow truthful

1 A No, I don't I don't think we're trying  
2 to insinuate they will Again, another  
3 party could adopt this entire agreement  
4 They may not be as above board as the  
5 Joint Petitioners are and they may want to  
6 do some untruthful advertising  
7 And, again, we think that our  
8 language will assist in clarifying proper  
9 uses of that, those marks and logos  
10 Q What would enable another party to adopt  
11 this entire agreement?  
12 A The pick and choose rules, that all or  
13 nothing as, I believe, someone has  
14 referred to them as before Rules by the  
15 FCC that addresses what agreements can be  
16 adopted  
17 Q Do you know whether the all or nothing  
18 rule is presently effective?  
19 A I believe it is I'm not for sure I  
20 believe we're proceeding down the path  
21 that it's effective I think it is  
22 Q On lines 14 to 15 on page 49 of your  
23 testimony --  
24 A Yes  
25 Q -- you state that over the last several

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1 comparative advertising It's just using  
2 our logo is our property, and we want to  
3 protect it  
4 Q Would it be illegal for somebody to use  
5 your logo?  
6 MR MEZA Object to form  
7 A I'm not an attorney I mean in the  
8 context of whatever basis -- They have our  
9 permission to use it, no, if they didn't,  
10 you know depending what they're doing --  
11 if it's an infringement, I guess would be  
12 the determination whether it's illegal or  
13 it's inappropriate  
14 Q Do you have any reason to believe that  
15 Petitioners do not have counsel that can  
16 assist them on trademark matters?  
17 MR MEZA Object to form  
18 A I have no opinion on what counsel the  
19 Joint Petitioners have I mean, I'm sure  
20 they have all sorts of counsel at their  
21 disposal I don't know I mean --  
22 Q And they're all good Strike that  
23 Do you have any reason to believe  
24 that Petitioners will not comply with the  
25 applicable law?

1 years, this area is one that has proven to  
2 be fraught with disagreement between  
3 BellSouth and CLPs  
4 A Yes  
5 Q What do you mean by "fraught with  
6 disagreement"?  
7 A Well my understanding, based on  
8 discussions with our trademark attorney  
9 and stuff, we've had to file claims  
10 against some of the CLPs for using our  
11 logo/name that is not altogether  
12 truthful And they represent that  
13 BellSouth does something in their  
14 advertising where it's not true  
15 Q Have there been legal actions filed  
16 against CLPs?  
17 A I believe there have been  
18 Q Do you know roughly how many?  
19 A No, I don't  
20 Q Do you know if all of those actions were  
21 resolved in BellSouth's favor?  
22 A No, I don't know that  
23 Q Please turn to page 52 of your November  
24 12th testimony  
25 A Okay

49 (Pages 341 to 344)

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1 Q And at lines 14 to 17  
2 A Uh-huh  
3 Q You state that BellSouth maintains that  
4 Petitioners should not forego resolution  
5 of issues at the appropriate regulatory  
6 body unless it is obvious or has been  
7 determined that neither the FCC nor the  
8 NCUC has experience or jurisdiction over  
9 the dispute Do you see that?  
10 A Yes  
11 Q When would it be obvious that the FCC does  
12 not have experience over a particular  
13 dispute?  
14 A I guess it would be obvious the parties  
15 can agree they don't in those  
16 circumstances I can't think of a  
17 specific example of, say a dispute  
18 regarding X, Y, and Z that would always  
19 be I can't name a specific example  
20 Q Who would decide that it is obvious?  
21 A I'd say the parties could together, could  
22 decide it's obvious and -- or determine  
23 how obvious or it's been determined The  
24 parties could agree that it's more  
25 appropriate to go to a court as opposed to

1 pertains to implementation or  
2 interpretation of the agreement that a  
3 state commission approved or arbitrated  
4 You know, again, whether there's  
5 some complaints about they didn't pay  
6 their bill and we take them to court for  
7 not paying their bill those types of  
8 things those could go outside of a  
9 commission  
10 Q Are there any types of disputes that  
11 BellSouth believes should go immediately  
12 to a court of law?  
13 A Actually, I think the parties had already  
14 agreed on the infringement of trademark  
15 for that to go to a court realizing, the  
16 PSCs don't have trademark expertise  
17 Q Do you know whether it was BellSouth that  
18 proposed that a court of law be the first  
19 avenue for a trademark dispute?  
20 A I don't know who proposed it It may have  
21 been in our agreement, the agreement for a  
22 while I'm not sure who -- how it got to  
23 where it is, to be honest with you  
24 Q Do you know what legal significance the  
25 word jurisdiction has?

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1 a commission  
2 Q Have the parties agreed thus far on what  
3 the appropriate tribunal is to take a  
4 dispute?  
5 A Well, you know that's why we have this  
6 arbitration issue, because -- I mean the  
7 language we propose -- the latest language  
8 we propose outlines the process by which  
9 we feel is appropriate to take a dispute  
10 to a court  
11 Q Do Petitioners agree with that position?  
12 A Not that I know of If they did I'd be  
13 glad to hear it  
14 Q And if the parties do not agree that it is  
15 obvious that the FCC does not have  
16 expertise over a dispute, what would  
17 happen?  
18 A Well we're not -- the FCC?  
19 Q FCC  
20 A They could take it to a state  
21 jurisdiction state commission I mean I  
22 think the available venues are state  
23 commission FCC, or court of law Again  
24 we don't think the court of law should be  
25 the first avenue for a dispute that

1 MR MEZA Object to form  
2 A I mean, we discussed this yesterday as far  
3 as you know who has oversight or ability  
4 to decide something relative to their  
5 jurisdiction what their purpose is, I  
6 guess  
7 Q And when would it be obvious that as  
8 you've written in your testimony, the NCUC  
9 does not have jurisdiction over a dispute?  
10 A I can't think of any specific examples I  
11 guess there could be some facets that  
12 aren't relative to interpretation or  
13 implementation of the agreement outside of  
14 those kind of caveats of description of  
15 things If it's an issue related to  
16 implementing the agreement or interpreting  
17 the agreement that they address -- again,  
18 I can't think of an example other than  
19 those -- of anything other than that would  
20 be outside their expertise  
21 I mean obviously a lot of --  
22 Virginia obviously thinks they don't have  
23 a lot of expertise, so they don't ever do  
24 arbitrations They defer everything to  
25 the FCC, so

50 (Pages 345 to 348)

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1 Q Is there a difference between the word  
2 expertise and jurisdiction?  
3 A I'm sorry?  
4 Q Is there a difference between the word  
5 expertise and the word jurisdiction?  
6 A I think jurisdiction has more of a legal  
7 connotation in my mind and expertise is  
8 you either know it or you don't or have  
9 some experience with it or you've got the  
10 staff to do it or any number of reasons  
11 what they know, person's an expert  
12 Q Is it your testimony that the NCUC has  
13 jurisdiction over disputes in this  
14 agreement?  
15 A If that's the ultimate language we agreed  
16 to or those entered into the agreement as  
17 far as disputes, dispute resolution  
18 They've got to take up expertise  
19 jurisdiction for agreements they  
20 arbitrated or approved  
21 Q So does your statement apply to any state  
22 commission in the BellSouth region?  
23 A If they approve the interconnection  
24 agreement that's entered into between the  
25 parties, they would have the -- relative

1 matters that lie outside the jurisdiction  
2 or expertise of the NCUC or the FCC, the  
3 parties would be entitled to seek  
4 resolution of the dispute through another  
5 venue, such as a court of law. Do you see  
6 that?  
7 A Yes  
8 Q And looking at the BellSouth version of  
9 language for section 13.1 of the general  
10 terms --  
11 A Uh-huh  
12 Q -- and conditions what in that language  
13 affords for the process that you describe  
14 at lines 2 to 4 of your testimony?  
15 MR MEZA Object to form  
16 A Well, I think that last sentence on that  
17 page, the parties are unable to resolve  
18 the issues relating to dispute in a normal  
19 course, then either party shall file a  
20 complaint with the Commission to resolve  
21 such disputes or, as explicitly otherwise  
22 provided for in this agreement, may  
23 proceed to any other remedy pursuant to  
24 law or equity as provided for in this  
25 section

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1 to implementation and interpretation of  
2 that agreement should be their ability  
3 If they look at the issue and  
4 decide we have -- we know nothing about  
5 this, then I'm sure they'd advise the  
6 parties hopefully and -- or the parties  
7 after a decision could take it to a court  
8 beyond that commission  
9 Q Would the state commissions all have  
10 expertise over disputes related to this  
11 interconnection agreement?  
12 MR MEZA Object to form  
13 A I don't think I can suppose what expertise  
14 every commission has. I mean, I think it  
15 varies depending on the state you're in  
16 whether they do or not  
17 Q I direct your attention to section 13.1 of  
18 the interconnection agreement section --  
19 A Uh-huh  
20 Q -- on general terms and conditions  
21 A Okay  
22 Q You stated that on the top of page 52 in  
23 your testimony lines 2 to 4 --  
24 A Yes  
25 Q -- for matters that lie -- for those

1 And then on the next section is  
2 where it talks about in those situations  
3 where it may be appropriate to go to a  
4 court if it lies outside the jurisdiction  
5 or expertise of the commission or FCC,  
6 paragraph 13.2  
7 Q Is there anything in this section that  
8 BellSouth has proposed that lists the type  
9 of disputes that would fall within this  
10 procedure that you've outlined at lines 2,  
11 4?  
12 A I mean it would have to be looked at on  
13 an individual case basis depending what  
14 the dispute entails  
15 Q And why is that?  
16 A Because there could be different aspects  
17 of the agreement that are in dispute that  
18 it's very clear that it would be better  
19 served or there's no expertise or  
20 jurisdiction in the state or the FCC, it  
21 would be better to go to the FCC and go to  
22 a court. I mean, again, until you look at  
23 the actual dispute and what it's  
24 surrounding or what it involves, I don't  
25 think you can make a global definition of

51 (Pages 349 to 352)

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1 it at this time  
2 Q Is it your testimony that a court of law  
3 would not always be the appropriate first  
4 avenue in a dispute between the parties?  
5 A I don't know that. Again, it goes back to  
6 if the state PFC or commission or the FCC  
7 doesn't have jurisdiction or expertise.  
8 the answer would be yes  
9 But in those cases where it's  
10 relative to the interpretation or  
11 implementation of the agreement that the  
12 commission has approved -- state  
13 commission approved, it's not the first  
14 line to go to  
15 Q For the jurisdictional and expertise  
16 reasons that you and I just discussed?  
17 A Yes  
18 Q Ms. Blake, did you participate in the  
19 negotiations on this issue of choice of  
20 venue?  
21 A Not directly with the Joint Petitioners,  
22 Within BellSouth. I had discussions  
23 developing my testimony with negotiators,  
24 but not -- I don't think this was one we  
25 discussed in the summit

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1 Q I'm handing you a large document that's in  
2 a rubber band, and it's voluminous. I  
3 have just one copy, but it's marked 16  
4 (DEPOSITION EXHIBIT NO. 16 WAS MARKED )  
5 A Uh-huh  
6 Q Do you recognize --  
7 MR. MEZA: Hold on. Let me take a  
8 look at it.  
9 (PAUSE )  
10 Q Do you recognize the top page?  
11 A Yes, I do.  
12 Q What is it?  
13 A It is BellSouth's supplemental response to  
14 Item G-9-2 to the Joint Petitioners' first  
15 request for production of documents.  
16 Q And the document -- or the documents  
17 following that first page, have you seen  
18 that document before?  
19 A Seen parts of it. I believe we did a  
20 second supplemental that I did not see --  
21 have not seen, but the majority of it I  
22 have seen as it was filed, part of the  
23 initial supplemental.  
24 Q Did you participate in the production of  
25 documents in response to this discovery

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1 item?  
2 A No. I did not, other than just looking at  
3 them.  
4 Q Of the documents that you recognize in  
5 that stack -- and take a minute to look at  
6 it, because I know it's big.  
7 A Okay.  
8 MR. MEZA: Can we go off the  
9 record?  
10 (RECESS )  
11 BY MS. JOYCE:  
12 Q Ms. Blake, before we broke, I was asking  
13 you questions about Exhibit 16 that's in  
14 front of you.  
15 A Yes.  
16 Q The documents that appear there were  
17 produced to the Petitioners in response to  
18 a question regarding Issue G-9.  
19 A Correct.  
20 Q Can you tell me what those documents have  
21 to do with the dispute in Issue G-9?  
22 MR. MEZA: Object to form.  
23 A Issue G-9 is, should a court of law be  
24 included among the venues in which a party  
25 may seek dispute resolution under the

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1 agreement? Basically Joint Petitioners  
2 want to be able to go to a court of law  
3 first or have that option.  
4 And the request specifically asks  
5 to provide all documents that -- and  
6 describe any and all complaints filed in a  
7 court of law regarding the terms and  
8 performance for enforcement of an  
9 interconnection agreement between  
10 BellSouth and a CLP. So these are copies  
11 of any court cases that a CLP/CLEC could  
12 have taken to court pursuant to their  
13 agreement.  
14 Q And did you see all of the documents that  
15 were produced in response to this item?  
16 A I reviewed -- I don't believe all of them  
17 that are here because, like I said,  
18 earlier, I did not see the second  
19 supplemental. We added some additional  
20 stuff, missing pages or whatever. But I  
21 did do a cursory review of just some of  
22 the complaints and cases that were taken  
23 before a court or what's attached here.  
24 Q Do you know how many cases have been filed  
25 in court against BellSouth by a CLEC in

52 (Pages 353 to 356)

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1 the BellSouth region?  
2 A No. I do not  
3 Q Do you know any of the claims that were  
4 brought in the complaints that are in  
5 front of you that were produced to Joint  
6 Petitioners?  
7 A One that stuck with me I think was a  
8 DeltaCom deposit dispute -- I think it was  
9 DeltaCom. It may be in here. I believe  
10 it's in here. I believe I saw it -- about  
11 whether they should pay a deposit  
12 But again whatever's in here is  
13 in here. I didn't look at any specific --  
14 you know, in detail of what the complaint  
15 was or -- you know, I did not read all  
16 this stuff that's attached hereto  
17 Q Are you aware generally of the claims that  
18 have been brought against BellSouth by  
19 CLPs?  
20 A Generally in the aspect, it would be  
21 something in their interconnection  
22 agreement that they contend we failed to  
23 provide compliant with their agreement,  
24 and they followed the dispute resolution  
25 process as set forth in those

1 which is your November 19th rebuttal  
2 testimony  
3 A Uh-huh. Are you done with this now? Oh,  
4 that's your only copy  
5 I'm sorry, what exhibit?  
6 Q That's all right. November 19th  
7 testimony  
8 A Okay  
9 Q Which is Exhibit 3. Please turn to page  
10 30  
11 A Okay  
12 Q At the top of the page on lines 1 to 2  
13 you state, BellSouth recognizes that  
14 certain issues and disputes may not fall  
15 squarely under the expertise of either the  
16 FCC or the Authority.  
17 By "Authority" are you referring  
18 to the Tennessee Regulatory Authority?  
19 A Yes  
20 Q What do you mean by this sentence?  
21 A It's in response to the Petitioners'  
22 assertion that our position doesn't  
23 adequately accommodate their ability and  
24 desire to bring matters before the court  
25 and it's in response to, is that

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Page 360

1 interconnection agreements  
2 Q Do you know whether there are any claims  
3 not related to the implement of an  
4 interconnection agreement?  
5 A Well, this asks for -- regarding terms and  
6 performance for enforcement of an  
7 interconnection agreement. I believe that  
8 would be what would be attached here. I  
9 don't know if there's others that would  
10 not be relative to those aspects of the  
11 claim or the dispute. I mean, it could  
12 be. Whether they're in here or not, I  
13 don't know.  
14 Q Do you have any familiarity with antitrust  
15 law?  
16 A No. I do not.  
17 Q Do you have any understanding about what  
18 antitrust law covers?  
19 A No. Not to any.  
20 Q Do you know what the term monopolization  
21 means?  
22 MR MEZA: Object to the form.  
23 A I mean, I know what monopoly means  
24 there's one provider, so  
25 Q I direct your attention to Exhibit 3,

1 accurate, and basically, no, it's not  
2 And we recognize there are certain issues  
3 and disputes that may not fall -- it  
4 means what it says -- that may not fall  
5 squarely within the expertise of the  
6 Commission or the Authority or the FCC.  
7 Q And would this sentence apply to the other  
8 state commissions in the BellSouth  
9 regions?  
10 A Yes. I mean, it's my Tennessee  
11 testimony. I think the exact same  
12 sentence is probably in the other exhibit  
13 we were just looking at.  
14 Q Can you tell me an issue that would not  
15 fall squarely under the expertise of  
16 either the FCC or a state commission?  
17 MR MEZA: Objection. Asked and  
18 answered.  
19 A No. I mean, other than the area we've  
20 already agreed to about the trademark --  
21 trademark law, I can't think of anything  
22 specific. Again, it would be on an  
23 individual case basis depending on what  
24 the dispute involved.  
25 Q Do you think it's possible that the

53 (Pages 357 to 360)

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1 parties could have disputes regarding  
2 roughly the same conduct by the other side  
3 and that the dispute could involve both  
4 issues within the interconnection  
5 agreement and also issues controlled by  
6 principles outside of the agreement?  
7 A You lost me on that question I'm not  
8 sure about disputes on the other side I  
9 don't know about -- Can you restate  
10 that? I'm not sure what you're trying to  
11 say  
12 Q Let me phrase it this way  
13 A Uh-huh  
14 Q Is it possible that a party could commit  
15 an act and the other party would seek  
16 relief from that act, both under the terms  
17 of the agreement and also under a federal  
18 statute that is not Section 251 or Section  
19 252?  
20 A I don't know I mean, again, I think  
21 that's a legal issue that would have to be  
22 assessed by attorneys to figure out what  
23 avenues are at their disposal  
24 Q Do you know whether it's possible that a  
25 single harm could have many different

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1 avenues of legal relief?  
2 A I guess it's possible, unless there's some  
3 prohibition against taking it to multiple  
4 jurisdictions at the same time There may  
5 be some limitation on that I don't know  
6 Q But just in terms of somebody's grounds,  
7 you owe me relief for this reason and this  
8 reason and this reason and it all relates  
9 to the same acts that you committed?  
10 A I'm sure one party could make numerous  
11 allegations against another party that  
12 they're impacted by those customer -- by  
13 that act I don't know that there's  
14 anything to preclude them having multiple  
15 claims Again, I'm not an attorney I  
16 think that's more of a legal assessment  
17 Q Is it BellSouth's position that in the  
18 event that a single act raises several  
19 claims that all of those claims should be  
20 heard in the same commission or the same  
21 courtroom?  
22 MR MEZA Object to form  
23 A If that act is in regards to obligations  
24 covered under the interconnection  
25 agreement that was approved or arbitrated

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1 by the state, it should go to that  
2 regulatory body for resolution  
3 Q Is it possible that that regulatory body  
4 would not have the authority to provide  
5 the relief that the aggrieved party seeks?  
6 A I don't know  
7 Q Do you know whether BellSouth has ever  
8 sought resolution in two different forums  
9 for the same harm?  
10 A I have no idea  
11 Q At page 30 of your rebuttal testimony the  
12 November 19th testimony  
13 A Okay  
14 Q Lines 12 to 14, you state that to  
15 prematurely bring a dispute to a court of  
16 law that might otherwise be addressed and  
17 resolved by a regulatory agency is to risk  
18 that the court will remand the case to the  
19 appropriate body  
20 A Yes, I see that  
21 Q Why is that a risk?  
22 A Well I mean, the way we see that it could  
23 happen, if you take something prematurely  
24 to a court and they say, well, this really  
25 should have been addressed by the state

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1 commission that approved the agreement for  
2 which the dispute centers around, then you  
3 would basically waste the time and  
4 efficiencies that that court would have  
5 to say, you know go back to the state, so  
6 you'd start all over again at the state  
7 where you could have initially started out  
8 that way and avoided the step to go to the  
9 court only to have the court remand it  
10 back to the state commission  
11 Q In your opinion, would that be a bad  
12 result?  
13 A I think it's a wasted step, wasted  
14 resources  
15 Q What does it mean to prematurely bring a  
16 dispute to a court of law?  
17 A Well basically, bypassing the regulatory  
18 commissions I mean, it could be after  
19 the result of the regulatory commission,  
20 the state commission makes its decision,  
21 you may ultimately appeal that to a  
22 court But to skip over that step when  
23 it's likely it's the decision of the  
24 commission is the right one and everybody  
25 agrees with it and then move on It's not

54 (Pages 361 to 364)

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1 necessary to go to court  
2 Q Has BellSouth ever filed a lawsuit against  
3 a CLEC in which it did not first go to a  
4 commission?  
5 A I don't know. I mean, if it's not  
6 relative to the interconnection agreement  
7 there's some other reason we were suing  
8 them outside of the interconnection  
9 agreement, that could be the case, but if  
10 it's relative to the terms and conditions  
11 of the interconnection agreement, we would  
12 go to the commission first with that  
13 typically.  
14 Q Do you know if BellSouth has ever not gone  
15 to the commission first?  
16 A I don't know that for sure, no.  
17 Q If a regulatory body does not have  
18 expertise over the dispute, would it be  
19 premature to go to a court of law?  
20 A No, and that's consistent with our  
21 position, is that if a state commission or  
22 the FCC does not have expertise or  
23 jurisdiction, the court of law is an  
24 acceptable venue.  
25 Q Could a regulatory body have expertise but

1 Q And Issue G-12 is stated herein as, should  
2 the agreement explicitly state that all  
3 existing state and federal laws, rules,  
4 regulations, and decisions apply unless  
5 otherwise specifically agreed to by the  
6 parties. Do you see that?  
7 A Yes.  
8 Q And in parentheses are you indicating that  
9 section 32.2 of the general terms and  
10 conditions is the relevant language on  
11 this issue?  
12 A Uh-huh. Yes, it is.  
13 Q On page 53 of this testimony, beginning at  
14 lines 10 to 11, you state it appears that  
15 the Petitioners' purpose with this issue  
16 is to ensure that they get at least two  
17 opportunities to negotiate and/or  
18 arbitrate the terms of the contract. Do  
19 you see that?  
20 A Yes.  
21 Q And what did you mean by that statement?  
22 A Well, the way we're seeing the Joint  
23 Petitioners' position and language that's  
24 been proposed is that the parties --  
25 during negotiations when we sit around for

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1 not jurisdiction over a dispute?  
2 A I would think so, they could. I mean, not  
3 going to speak for what expertise every  
4 commission has out there on every topic.  
5 It could be the case, but -- somebody  
6 knows something about it, I don't know,  
7 whatever something they don't have  
8 jurisdiction on but they know the topic.  
9 Q And could a regulatory body have  
10 jurisdiction over a dispute but no  
11 expertise?  
12 A Sure.  
13 Q And do you think that that situation would  
14 be obvious?  
15 A I don't think you can say it would be  
16 obvious or not. It would depend on the  
17 circumstances and what the dispute was  
18 about, how it fit into that, whether they  
19 have expertise or not.  
20 Q Please return to Exhibit 2, your November  
21 12th testimony, Page 52.  
22 A Okay.  
23 Q And this begins your testimony on issue  
24 G-12, is that right?  
25 A Yes. At the bottom, yes.

1 months and negotiate and come to agreement  
2 on the language or whatever's going to --  
3 parties are going to abide by and the  
4 parties reach agreement, the intent of  
5 that language and how the parties will  
6 operate and whether that's exactly  
7 compliant with the law or spelled out or  
8 encompasses every word of the law that  
9 that particular item pertains to or not is  
10 immaterial. The parties agreed to the  
11 language that's in the contract as it was  
12 negotiated and/or arbitrated, if the  
13 commission orders something different.  
14 The second bite basically comes  
15 down the road if the language, as was  
16 negotiated at the time previously, somehow  
17 is not favorable at this time to the  
18 Petitioners or to the CLEC, they could  
19 attempt to find -- go back to the  
20 original law and say, well, the language  
21 that's in here isn't consistent with what  
22 this law says. Even though at the time  
23 the parties negotiated it, they would have  
24 agreed in that meeting of the minds that  
25 this is how we're going to operate. It

55 (Pages 365 to 368)

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1 may not be verbatim word by word of  
2 exactly what the law or the rule says but  
3 that's what the parties agreed to and  
4 that's what should prevail So it's that  
5 second bite down the road after the  
6 agreement's been memorialized and entered  
7 into and become effective that we're  
8 trying to prevent the ability of  
9 arbitrarily going after a court -- you  
10 know finding an order or something, some  
11 language in some law that doesn't exactly  
12 match what the parties agreed to  
13 Q Is it BellSouth's position that there are  
14 some laws that need not be complied with  
15 in the agreement?  
16 A It's BellSouth's position that the  
17 agreement needs to comply with the law to  
18 the extent the parties agree to the  
19 language that's in the agreement I mean,  
20 the parties can agree to anything they  
21 want I mean, we can't do stuff that's  
22 contrary to the law or unlawful, if you  
23 will might be a better term to use But  
24 the parties can reach agreement of how  
25 they're interpreting that law or how

1 avoid disputes?  
2 A It could, depending on what the  
3 circumstances or the situation is Again,  
4 back to my trademark I mean, I think  
5 it's clarity and specifically stating, you  
6 know what is allowed or truthful  
7 advertising is intended for that purpose  
8 to clarify it But, again the parties  
9 would agree at that time what that  
10 language means and what the intent of the  
11 parties' obligations are  
12 Q Why is it appropriate for the trademark  
13 language to expressly include the legal  
14 standards that the parties will operate  
15 under?  
16 A Well it's mainly to avoid confusion in  
17 the future and reduce the possible future  
18 disputes relative to our experience. I  
19 mean  
20 Q At page 56 of this testimony --  
21 A Uh-huh  
22 Q -- at lines 15 to 17 --  
23 A Uh-huh  
24 Q -- you state, in the event that an  
25 obligation exists that was not previously

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1 they're interpreting that rule,  
2 memorialize that in the agreement, and  
3 that's how they'll operate So I don't  
4 take that as being not compliant with the  
5 law That's compliant with what the  
6 parties agreed to in interpreting that  
7 law  
8 Q What if the agreement of the parties  
9 indeed violates a state law what should  
10 happen then?  
11 MR MEZA Object to the form  
12 A Well, I mean I would say one party or the  
13 other would have to bring a dispute or  
14 make some claim that it's in violation of  
15 the law unless the commission approved  
16 it, then it did realize it was in  
17 violation of the law -- I mean that could  
18 have gotten -- before it got approved  
19 could have gotten fixed or whatever The  
20 agreement as it's memorialized would  
21 effectuate the parties' intent on how they  
22 planned to operate  
23 Q Is it BellSouth's position that when terms  
24 are expressly included in an  
25 interconnection agreement that it helps

1 included in the interconnection agreement,  
2 the parties should then amend the  
3 agreement prospectively to include such an  
4 obligation And "prospectively" is  
5 italicized Do you see that?  
6 A Yes Uh-huh  
7 Q What does it mean for an obligation to  
8 exist?  
9 A An obligation that one party thought might  
10 have existed and the other party did not,  
11 and then they either resolve it through a  
12 commission arbitration or a complaint that  
13 says we thought you had to do this and  
14 they said no, we don't have to do it  
15 That wasn't our intent of the language  
16 And however the -- it ends up,  
17 the final decision are we obligated, are  
18 we not, should it be determined that there  
19 is an obligation and that the language  
20 needs to be -- different language needs  
21 to be included in the agreement to  
22 memorialize that obligation, then that  
23 would have to be effective prospectively  
24 Q So is your testimony that if an obligation  
25 is effective but not included in -- was

56 (Pages 369 to 372)

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1 effective prior to the execution of an  
2 agreement. that it should -- when should  
3 it apply prospectively?

4 A Well this all starts out when one party  
5 thinks there's an obligation and the other  
6 party does not based on the initial  
7 provisions negotiated at the time the  
8 agreement was entered into

9 At some point down the road, one  
10 of the parties indicates, well, you're not  
11 complying with the law. The law says  
12 this. But even though our agreement that  
13 we reached back at the beginning  
14 memorializes what the parties agreed to  
15 someone could claim and say, that's not  
16 really what I agreed to

17 And if they raise that dispute  
18 with -- and the Commission resolves that  
19 dispute and ends up saying there is an  
20 obligation after all, you know, it wasn't  
21 initially intended to be the obligation  
22 according to at least one of the parties'  
23 mind, any determination down the road that  
24 says, you know, it will be an obligation  
25 or that's how it needs to be read or

1 outcome of that is, our position is it  
2 should be prospectively applied. It  
3 doesn't mean that what was in there before  
4 was in violation of anything. Each party  
5 had their understanding and thought they  
6 had a meeting of the mind at the time that  
7 language was agreed to

8 Q Could it not happen that the tribunal  
9 would hold that, in fact, the agreement  
10 was in violation of a law?

11 A I'm sure the tribunal could reach that  
12 conclusion and do whatever, but again  
13 based on our language, we're putting forth  
14 that the language should say it should be  
15 prospectively

16 Q Why would retroactive relief not be  
17 appropriate in that circumstance?

18 A Primarily when we enter into an agreement,  
19 we need to know what our obligations are  
20 and we have an understanding of what those  
21 obligations are and we act accordingly to  
22 comply with those obligations

23 And going down the path and then  
24 later in the process somebody finds a law  
25 that they like better or is more favorably

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1 clarify it, whatever, put language in  
2 there to make it clear exactly what the  
3 obligations are, it should be prospective  
4 only, not retroactive back to the  
5 beginning of the contract

6 Q So in the event that a party says there's  
7 this obligation and we think it should be  
8 part of this agreement and it goes to a  
9 resolution before some tribunal and the  
10 tribunal says that the party is correct,  
11 during that period, was the agreement in  
12 compliance with the law, in your opinion?

13 MR MEZA: Object to the form.  
14 A The agreement was in compliance with what  
15 the parties intended and understand  
16 meeting of the minds was at the time the  
17 agreement was negotiated. I mean, if at  
18 some juncture down the road, six months, a  
19 year, or whenever, some party deems that  
20 that's not what they intended, I mean,  
21 that's a complaint proceeding that both  
22 parties would defend what their intent of  
23 the language was and how they interpreted  
24 it and what they meant when they agreed to  
25 that and defend that. And whatever the

1 applied to them that way, if we had that  
2 language in there, if they had that  
3 language in there, then to me it's  
4 disingenuous or could cause all sorts of  
5 problems to say, well, we're going to go  
6 back and undo this understanding we had at  
7 the beginning

8 Q Does it matter when the law that this  
9 party invokes was made effective in that  
10 circumstance?

11 A I mean, can you ask that again? Make sure  
12 I know what you asked. I think I do,  
13 but --

14 Q I believe, to paraphrase your last  
15 response, you were saying that a CLEC  
16 could negotiate an agreement, sign it,  
17 come back sometime later, say I found this  
18 other law and I want to use it now

19 A Uh-huh

20 Q Would it matter when that law became  
21 effective to you?

22 A It would matter only in the context if it  
23 came about after the parties entered into  
24 the initial agreement. I mean, if it was  
25 a law that existed at the time that they



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1 reached the meeting of the minds on what  
2 language they were going to agree to. and  
3 then if a subsequent -- six months down  
4 the road a new law came out that to  
5 me -- that would fall under the change of  
6 law provisions. The parties would then  
7 negotiate how they would interpret that  
8 new law into the agreement

9 Q And if it was a law that existed prior to  
10 the signing of the agreement then what  
11 would the significance of that be?

12 A The law as it existed at the time the  
13 parties reached the agreement on what the  
14 obligations are should have been factored  
15 in. I mean the laws that existed at the  
16 time the parties reached -- had their  
17 negotiations and determined what the  
18 obligations were, it would have been based  
19 on the concurrent status of the law or it  
20 should have been

21 Q What if it wasn't?

22 A Again, the language the parties would have  
23 agreed to would have been consistent with  
24 their understanding. Whether somebody  
25 missed a law or, you know, failed to

1 and chicken and egg thing. So, I mean, I  
2 don't know that there's a clean answer to  
3 your question. It's where we are right  
4 now

5 Q What would need to happen for the new  
6 rules to come out as you used the term?

7 A The FCC would have to issue their order --  
8 rule on it then issue an order, publish  
9 it in the federal registry, issue an  
10 order, and all the processes that take  
11 place at the FCC to make an order become  
12 effective

13 Q Is an order the same thing as a press  
14 release?

15 A No

16 Q Is a press release the same as a rule  
17 coming out?

18 A Not my understanding of it

19 Q Would BellSouth amend an interconnection  
20 agreement to incorporate a press release?

21 A We could amend an agreement for any reason  
22 if the parties agreed to do the  
23 amendment. Whether that constitutes  
24 invoking change of law or not is another  
25 matter. I think an amendment can be

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1 recognize something, the meeting of the  
2 minds -- and, again, I guess if they found  
3 something, they wanted to apply it, they  
4 could seek an amendment, modify the  
5 language, but it still should be  
6 prospective only

7 Q Why would an amendment be necessary?

8 A If it required a changing of the language  
9 when setting forth the obligations the  
10 parties have to operate under, memorialize  
11 what that language now says. It's  
12 different than what they initially agreed  
13 to

14 Q Is there any federal unbundling law that  
15 would not be included in the new agreement  
16 that's under dispute?

17 MR. MEZA: Object to form

18 A Well, we're in a weird timing in the  
19 situation. If the final rules come out  
20 next week, I'm not sure how they're all  
21 going to get -- I mean, again, based on  
22 our language, they immediately become  
23 effective, but we're not there yet. That  
24 language hasn't been accepted, so it's  
25 kind of in this change of law proceedings

1 requested by either party during any time  
2 of the agreement to amend it for whatever  
3 reason, if the other party agrees or  
4 doesn't agree

5 Q If the other party didn't agree, would  
6 BellSouth seek resolution before some  
7 tribunal on that point?

8 A If it's just based on a press release, I  
9 would say not. I mean, I would say we  
10 have stand off if it's an effective  
11 order

12 Q Is there any state unbundling law that  
13 will not be included in the new agreement?

14 MR. MEZA: Object to the form

15 A I'm not familiar with the state unbundling  
16 laws that may or may not be out there. We  
17 talked about that yesterday

18 Q I used the term law loosely. It could be  
19 a statute or agreement or an order of a  
20 state commission

21 Is there anything to your  
22 knowledge that isn't included in the new  
23 agreement?

24 A I mean, I don't believe so. I mean, our  
25 agreement will comply with the laws

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1 Again, if the state has an unbundling law  
2 that is in conflict with the federal  
3 unbundling law, like I discussed before  
4 it's our position that's not appropriate  
5 and shouldn't be allowed  
6 Q And what is the appropriate tribunal to  
7 decide whether an amendment to an  
8 agreement is necessary to comply with --  
9 or to adopt or incorporate a new law?  
10 MR MEZA Object to the form  
11 A The change of law provisions set forth how  
12 the parties would go about implementing  
13 changes to the law whether that be state  
14 law federal law, whatever other law there  
15 might be that impacts the obligations in  
16 the agreement So however that change of  
17 law provisions are set forth in the  
18 agreement would dictate how that gets into  
19 the parties' agreement  
20 Q And do you know what the change of law  
21 provision is in this new agreement?  
22 A No I actually don't It's not in  
23 dispute, so I guess it would probably be  
24 our standard language or consistent with  
25 that or we reached agreement on something

1 providers of service or operating in the  
2 state, any number of different laws and  
3 I'm not familiar with all of them to be a  
4 CLEC what you have -- or CLP what you  
5 have to comply with  
6 Q Do you have any reason to think that the  
7 Petitioners won't comply with their  
8 obligations?  
9 MR MEZA Object to the form  
10 A No I don't have any knowledge that would  
11 indicate they would not comply with the  
12 law  
13 Q You testified that sitting here today,  
14 you're not personally aware of all of the  
15 unbundling obligations that apply at this  
16 time to BellSouth?  
17 A As far as state unbundling obligations?  
18 Q You can start with state  
19 A I'm not familiar specifically with what  
20 they may be There's different orders,  
21 requirements they may have issued --  
22 different states may have issued for  
23 different items, that they say we're  
24 required to do something relative to what  
25 we had to provide to CLECs as part of

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1 else I don't know  
2 Q Has BellSouth ever agreed to amend an  
3 agreement in order to incorporate a law  
4 that had preexisted the signing of the  
5 agreement?  
6 A It's possible I'm not familiar with the  
7 hundreds of agreements we have how many  
8 different situations may arise and the  
9 timing of them and what they were seeking  
10 to amend  
11 Q What obligations do the Joint Petitioners  
12 obligate under in providing service?  
13 MR MEZA Object to form  
14 A Under -- What obligations do the Joint  
15 Petitioners have to provide service to  
16 their end users?  
17 Q Just what obligations do they operate  
18 under as a telecom carrier in this  
19 country?  
20 A I believe they've got whatever the state  
21 certification requirements are to provide  
22 local telecom service in the state,  
23 obligations under the Act relative to all  
24 LECs They've got obligations there  
25 Whatever applicable law applies to them as

1 unbundling  
2 Q Do you think anybody at BellSouth knows  
3 that answer?  
4 A I imagine one of the attorneys somewhere  
5 knows that answer I don't know  
6 Q And, sitting here today, do you know the  
7 unbundling obligations under federal law  
8 that apply to BellSouth?  
9 A It would be those set forth in the  
10 commissions' orders, the Act, the impact  
11 of USTA II the Interim Rules Order, and  
12 next week whenever effective after that,  
13 the final unbundling rules I mean the  
14 whole eight-year history of The Telecom  
15 Act and the implementation of the Act and  
16 how that's evolved --  
17 Q Are the federal --  
18 A I'm sorry  
19 Q Are the federal unbundling laws final?  
20 MR MEZA Object to the form  
21 A I would say no, in that they're releasing  
22 new final rules sometime in the future  
23 Q We may know today when that will be  
24 I'd like to move on to Issue 2-5  
25 and that begins at page 56 of your

59 (Pages 381 to 384)

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1 November 12th testimony  
2 A I'm there  
3 Q Okay. This issue, as stated in your  
4 testimony is, what rates, terms, and  
5 conditions should govern the CLECs'  
6 transition of existing network elements  
7 that BellSouth is no longer obligated to  
8 provide as UNEs to other services. Do you  
9 see that?  
10 A Yes  
11 Q In this context, what does it mean to  
12 transition?  
13 A It means to change from receiving a  
14 service provided pursuant to -- or  
15 provided -- receiving a service  
16 provisioned one way to receiving a  
17 comparable service a different way  
18 Q At page 57 of this testimony --  
19 A Uh-huh  
20 Q -- you talk about -- it begins at 12 to  
21 13 -- lines 12 to 13  
22 A Yes  
23 Q The switching eliminated elements  
24 A Yes  
25 Q What are those elements?"

1 option to transition to a comparable  
2 resale service?  
3 A No. They could disconnect the element  
4 They could transition it to an element or  
5 a service provided pursuant to a  
6 commercial agreement. Those are two other  
7 options  
8 Q Could they transition to a tariff service?  
9 A Sure. That's pretty much what resale is  
10 but it's discounted. If you want to pay  
11 full price. That's okay, too.  
12 Q If the Petitioners chose to transition to  
13 a tariffed offering for the element --  
14 A Uh-huh  
15 Q -- would any discount apply?  
16 A If it's a tariff that's available for  
17 resale, the resale discount would apply,  
18 which is what I talk about in the next  
19 sentence -- or at the end of that first  
20 sentence. Subject to the appropriate  
21 resale discounts, if it's previously  
22 obtaining a UNE platform and that  
23 eliminates -- the switching eliminates  
24 so they migrate to basic residential line,  
25 it would be at the tariffed rate less the

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1 A Again, back to what we discussed in an  
2 earlier issue. Item, I think it's 112, to  
3 mess with the issue statement caused the  
4 item numbers to change a little bit. But,  
5 anyway, it's the issue relative to what  
6 elements are frozen. We defined what mass  
7 market switching was, and this would  
8 include those elements and functions that  
9 pertain to mass market -- the elimination  
10 of mass market switching as a UNE, which  
11 would be your switching and any of the  
12 associated features/functions of the  
13 switch.  
14 Q Would they be the elements listed on page  
15 22 of this testimony, 10 to 12?  
16 A Yes. Yeah. That would be some of them,  
17 not all of them.  
18 Q You discuss at page 57, lines 15 to 16 --  
19 A Yes  
20 Q -- that if the Joint Petitioners submit an  
21 order to transition switching eliminated  
22 elements to a comparable resale service  
23 within 30 days of the expiration of the  
24 transition period  
25 My question is, is their only

1 wholesale discount, basically provision  
2 pursuant to resale -- a resale obligation  
3 Q And by appropriate resale discounts, do  
4 you mean a discount that would have been  
5 derived pursuant to Section 251 of the '96  
6 Act?  
7 A Yes. It would be whatever -- the resale  
8 discounts established by the state --  
9 state commissions years ago.  
10 Q Where did the transition period of 30 days  
11 derive from?  
12 A I believe our folks in interconnection  
13 services developed the transition plan of  
14 trying to afford some time post the end of  
15 the -- or at the end of the transition  
16 period to effectuate the parties' time to  
17 submit the orders and get things moving,  
18 you know, have a grace period, if you  
19 will.  
20 Q So did the interconnection people choose  
21 the 30 days, that number?  
22 A Yes  
23 Q Do you know what they base the 30 days on?  
24 A No, I don't. I mean, other than it's a  
25 month -- basically a month after, within a

60 (Pages 385 to 388)

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1 month  
2 Q And what would be the significance of it  
3 being a month?  
4 A Just a definitive period of time that both  
5 parties would understand that they've got  
6 to do something within that period of  
7 time  
8 Q Has BellSouth ever proposed a different  
9 transition period for other purposes?  
10 A I'm not sure exactly -- I mean, of all  
11 the negotiations that may have gone on  
12 with individual CLEC of agreeing -- I  
13 don't know. There may be other language  
14 we've reached with other CLECs that may be  
15 different than that. I don't know.  
16 Q Have I provided to you attachment 2 of the  
17 agreement KKB-1 as an exhibit?  
18 A I don't believe you have.  
19 Q Okay.  
20 A I'll have to check, but --  
21 Q Do you have it?  
22 A Nope. Nope.  
23 (DEPOSITION EXHIBIT NO. 17 WAS MARKED.)  
24 Q Now I am. I'm handing you a document  
25 marked Exhibit 17.

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1 A Uh-huh.  
2 Q I direct your attention to page 25 of that  
3 exhibit, section 2.11.2.5.  
4 A Okay.  
5 Q Do you see that?  
6 A Yes.  
7 Q Who proposed the language that appears  
8 here?  
9 A I have no idea who proposed this  
10 language. This is -- I mean, it's not in  
11 dispute. It's underlined and --  
12 Q Do you know what the significance of the  
13 words being underlined in this draft  
14 agreement is?  
15 A Other than it maybe was added. I don't  
16 know. Typically when things are  
17 underlined -- this appears to be a red  
18 lined version or the attachment or it is a  
19 red lined version of what we proposed to  
20 be the new attachment 2. It's got  
21 underlines and strikings that indicate  
22 editing.  
23 Q Did you read through this document before  
24 you appended it to your testimony?  
25 A Yes. I read through it relative to the

1 issues that are in dispute in this  
2 proceeding.  
3 Q You don't recall looking at section  
4 2.11.2.5?  
5 A No. I did not.  
6 Q Can you turn to page 35 of that same  
7 exhibit, please, and look at section  
8 2.16.3.1.  
9 A 2.16.3.1 okay. Uh-huh.  
10 Q Do you know why this language has been  
11 struck through?  
12 A It's my understanding sub loop feeder was  
13 eliminated by the TRO.  
14 Q Do you know --  
15 A I'm sorry.  
16 Q Do you know who initially had proposed the  
17 language?  
18 A Proposed to delete the language?  
19 Q No. No, proposed the language?  
20 A I imagine this was -- oh, sorry, it's  
21 struck. I mean, I imagine BellSouth would  
22 have proposed it to remove it from the  
23 initial agreement. I mean, the effect of  
24 having it in here would be that it's going  
25 to be no longer made available. Striking

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1 it. I don't know if that -- there's no  
2 other place that it's put back in. Still  
3 doesn't make it available. And this  
4 is --  
5 Q But you don't know who initially proposed  
6 the language?  
7 A No. I don't. Again, I would imagine  
8 BellSouth proposed it. My supposition  
9 just based on the fact that it's  
10 eliminating something that we previously  
11 were obligated to provide. We're not  
12 obligated to provide sub loop feeder, so  
13 to the extent you have the CLECs -- or  
14 Joint Petitioners have sub loop feeders in  
15 place, we need to work out a process to  
16 transition off of that after the effective  
17 day of the agreement.  
18 Q And do you see in two places where it  
19 states there's a 90 calendar day period in  
20 this language?  
21 A Yes. Yes, I see that.  
22 Q Would that be 90-day transition period?  
23 A Again, it's relative to this element that  
24 was eliminated by the TRO. The other  
25 language we're discussing or relative to

61 (Pages 389 to 392)

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1 the open issues pertains to the Interim  
2 Rules Order and the ultimate final  
3 unbundling rules once we get to the end of  
4 the transition period  
5 Q Do you know who proposed a 90-day  
6 transition period for this element?  
7 A I would imagine it would have been  
8 somebody in interconnection services. I  
9 don't know who.  
10 Q Can you think of any reason that this  
11 element would be subject to a 90-day  
12 transition period?  
13 A I don't know why it would be 90 days  
14 versus any other day.  
15 Q Do you know who struck through the  
16 language at that section?  
17 A No. I don't. Other than it says open to  
18 the CLEC. So if we struck it and we're  
19 waiting for the CLECs to agree to striking  
20 it, I don't know. I really don't know.  
21 Q Is it your understanding that the CLECs  
22 are going to make a counteroffer on that  
23 section?  
24 A I would guess if they're not accepting it  
25 as written, they'd counter it or it would

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1 be tied up in arbitration. It's not tied  
2 up in arbitration, so I'm not sure where  
3 we go from here on this particular matter.  
4 Q On page 58 of your November 12th  
5 testimony, if you could please turn to  
6 that.  
7 A Okay.  
8 Q At lines 4 to 6, you state that, in  
9 addition, Joint Petitioners would be  
10 charged BellSouth's labor costs in  
11 identifying and processing the transition  
12 of the switching eliminated elements to  
13 resale. Do you see that?  
14 A Yes.  
15 Q What do you mean by "BellSouth's labor  
16 costs"?  
17 A Well, this pertains to a situation where  
18 the Joint Petitioners had failed to submit  
19 a transition order or a disconnect of an  
20 eliminated element -- switching eliminated  
21 element within the 30 days. They did  
22 nothing. So at the end of that juncture,  
23 we would take steps to identify the  
24 circuits or services that needed to be --  
25 UNEs that needed to be migrated to either

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1 resale or disconnected and the process or  
2 the expense we incur to go through that.  
3 of identifying the circuits and processing  
4 the orders, setting it up to proceed with  
5 the orders, that's the labor costs over  
6 and above the nonrecurring costs that  
7 would be charged.  
8 Q So one of the labor costs is identifying  
9 And what is another cost?  
10 A Well, it would basically be the process  
11 for us to identify and process the  
12 transition.  
13 Q Do you know whether BellSouth has  
14 conducted a study of the amount of those  
15 costs?  
16 A I'm not aware of any, no.  
17 Q Do you know whether any commission has  
18 analyzed the costs associated with  
19 transition as regards to labor costs?  
20 A Not aware of any, no.  
21 Q And what is the cause for BellSouth to  
22 incur these costs?  
23 A The cause would be because the CLECs  
24 failed to -- Joint Petitioners had failed  
25 to do it themselves and submit the orders

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1 to transition off of the vacated elements  
2 to comply with the agreement.  
3 Q Is it BellSouth's position that it is  
4 required to stop providing certain UNEs?  
5 MR MEZA: Object to form.  
6 A I don't know that we're required to stop  
7 providing, but we're not required to  
8 continue providing at the TELRIC rates  
9 what they're eliminating.  
10 Q Is there any order of any commission that  
11 obligates BellSouth to move CLECs from a  
12 UNE to resale?  
13 MR MEZA: Object to form.  
14 A I'm not aware of any order requiring  
15 BellSouth to do that, no.  
16 Q Are you familiar with the rates that would  
17 be charged to a CLEC in a resale scenario?  
18 A It would be the tariffed rate less the  
19 commission -- state commission established  
20 resale discount.  
21 Q Do you have any understanding as to the  
22 level of those rates?  
23 A The tariffed rates or the --  
24 Q The resale discounted rates.  
25 A It would be whatever the percentage is in

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1 the state. Say it's 20 percent. It would  
2 be 20 percent less than the tariff that's  
3 on file with the commission that we would  
4 charge our retail customers.  
5 Q And would that rate be lower than a TELRIC  
6 set rate?  
7 A In some cases, it could be.  
8 Q Could it be higher than the TELRIC rates?  
9 A I'm sure it could be, depending on the  
10 service that you're obtaining.  
11 Q Is it more common for a resale discount  
12 rate to be higher than a TELRIC rate or  
13 lower?  
14 A Again --  
15 MR MEZA: Object to the form.  
16 A -- it depends on the service that's being  
17 provided, whether -- residential services  
18 are typically lower than business  
19 services. So if you're using a UNE to  
20 provide the service you migrate to --  
21 you're serving a business customer, you  
22 migrate to a resold business line, it's  
23 most likely to be higher, and the inverse  
24 is true on the retail. If you're using a  
25 UNE to provide a residential service and

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1 you migrate to a resold tariff service, it  
2 will be lower. Because the residential  
3 rates are specially priced to keep them  
4 low.  
5 Q Do you typically engage in rate analysis  
6 in your job?  
7 MR MEZA: Object to the form.  
8 A I do analysis in comparing UNE prices with  
9 tariffed rates versus, you know, what  
10 those rates are, but I'm not sure if I do  
11 any analysis other than the rates are what  
12 the rates are and what the resale rates  
13 are.  
14 Q Does BellSouth have a preference as to  
15 whether a CLEC uses a UNE versus an  
16 element provided at resale?  
17 A I mean, resale and UNE and providing their  
18 own facilities are the three entry  
19 strategies. I'm not sure we have a  
20 preference. I think the goal of the Act  
21 is to promote facility-based competition.  
22 So I mean, those are entry strategies.  
23 When you come in as resale, you don't  
24 forever stay at resale. It would be a  
25 stepping stone to ultimately be a

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1 facility-based provider service.  
2 Q Are you familiar with BellSouth's policy  
3 as to whether it will provide DSL over  
4 UNEs?  
5 A I'm familiar there's -- we have a policy  
6 in regards to that -- that issue, yes.  
7 Q And what is it?  
8 A It's BellSouth's position that we're not  
9 obligated -- should not be obligated and  
10 the rules and orders that the FCC has put  
11 forth, we're not obligated to continue to  
12 provide our DSL or retail FastAccess  
13 service over UNE-P or UNE loops.  
14 Q Does BellSouth have a policy as to whether  
15 it will provide DSL over a resold loop?  
16 MR MEZA: Object to the form.  
17 A Well, it's not a resold loop. It's a  
18 resold service. And our FastAccess  
19 service is available for resell on a  
20 resold service.  
21 Q Let me clarify it. If a CLP is serving a  
22 customer, Ms. Smith, over a loop that it  
23 obtained at resale, do you know what  
24 BellSouth's policy is on providing  
25 Ms. Smith with BellSouth DSL over that

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1 loop?  
2 MR MEZA: Object to the form.  
3 A Again, we don't -- the CLP would not  
4 provide the service over resold loop.  
5 They provided it over a resold service, a  
6 tariff which would include the loop and  
7 the switchboard and the transport. It all  
8 goes with that service that's resold.  
9 Therefore -- I guess to answer your  
10 question, if a CLEC is providing resold  
11 service to that end user, they can also  
12 add our FastAccess on top of that same  
13 service --  
14 Q BellSouth --  
15 A -- to provide DSL to that -- Ms. Smith.  
16 Q And do you know why BellSouth will provide  
17 DSL in the resold situation but not over  
18 UNE-P?  
19 MR MEZA: Object to the form.  
20 A The difference between resold is BellSouth  
21 is still the underlying voice provider.  
22 In the UNE-P, BellSouth -- the CLEC  
23 pretty much owns that facility in the  
24 UNE-P situation, so we're not the  
25 underlying voice product.

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1 Q Is ownership the only criterion in that  
2 decision who owns the loop?  
3 MR MEZA I object to this whole  
4 line of questioning You have a witness  
5 who's already addressed this in his  
6 testimony I don't understand why you're  
7 inquiring of Ms Blake She's not  
8 testified on Issue 46 Mr Fogle has --  
9 he gave you in his testimony all the  
10 reasons why our policy is what it is And  
11 so I'd appreciate it if you would wrap it  
12 up I just don't think it's relevant at  
13 all to her testimony  
14 MS JOYCE Well, it's relevant to  
15 the issue of whether BellSouth prefers  
16 resell or UNEs and --  
17 MR MEZA She's answered that  
18 MS JOYCE She said she didn't  
19 know, so I'm just exploring --  
20 A I think we're indifferent to it I mean  
21 if that would help  
22 Q Do you know whether Petitioners incur any  
23 costs in performing a transition?  
24 A I would -- I don't know specifically what  
25 costs they would incur I would imagine

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1 they've got their personnel costs to  
2 process -- gather the information to  
3 submit an order, whatever their back  
4 office costs are to effectuate the  
5 submission of those orders  
6 Q Would it be appropriate for Petitioners to  
7 charge BellSouth their costs incurred  
8 during a transition?  
9 A Well I think both parties have a cost  
10 they're incurring to process the  
11 transition orders and we're both under an  
12 obligation to comply with the agreement  
13 If the agreement eliminates the  
14 availability of an element, it's both  
15 parties' obligation to migrate off of that  
16 to the appropriate service  
17 Q You state at page 58 of your testimony  
18 that Joint Petitioners will be charged  
19 BellSouth's labor costs  
20 A If the Joint Petitioners fail to initiate  
21 the orders themselves  
22 Q And in that scenario, would the Joint  
23 Petitioners be entitled to charge  
24 BellSouth their labor costs?  
25 A I'm not quite following you, what labor

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1 costs you're talking about that you would  
2 be charging us We're basically -- In  
3 that scenario if we fail to submit an  
4 order to either transition or disconnect  
5 we've got to identify the circuit, go into  
6 our records find every one of your  
7 elements that are no longer available and  
8 need to be transitioned Whereas you've  
9 got that exact information in your systems  
10 to know what elements are eliminated just  
11 as we do, and you're as much -- or have  
12 the onus on you, as the Joint Petitioners,  
13 as much as we do to be compliant with the  
14 agreement They're your services you're  
15 buying from us You need to tell us what  
16 you want us to do with them We can't  
17 just presume that you want us to put them  
18 on resale, disconnect them, move them to a  
19 negotiated agreement -- commercial  
20 agreement  
21 Q Right But in it -- when a transition  
22 occurs --  
23 A Uh-huh  
24 Q -- you testified that Petitioners most  
25 likely do incur costs in order to effect

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1 that transition?  
2 A Right No more than you incur a cost too  
3 when you get a new customer and you have  
4 to do the work to submit the order to  
5 initiate that service for that customer,  
6 and that's the cost of doing business  
7 Q So in the event that a transition is  
8 required and it occurs, would it be  
9 appropriate for Petitioners to seek  
10 reimbursement from BellSouth for the cost  
11 that they incurred in assisting with that  
12 transition?  
13 A No, I don't think it's appropriate at all  
14 Q Why not?  
15 A Your cost of doing business -- your cost  
16 as if you had never had the opportunity to  
17 provide that as an element you would have  
18 had cost to provide it as a resale service  
19 or under a commercial agreement, whatever  
20 those costs are This is a transition to  
21 get you where you need to be based on the  
22 current law And those are your loops,  
23 your services you're providing to your end  
24 users And in compliance with the  
25 agreement, those elements are no longer

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1 available in that form. need to be  
2 migrated to a different service to be  
3 compliant with the agreement that doesn't  
4 provide the old elements  
5 Q If a Joint Petitioner is still using a  
6 switching eliminated element --  
7 A Uh-huh  
8 Q -- are they not in compliance with the  
9 law?  
10 A This is addressing 30 days or at the end  
11 of the transition period and the process  
12 that would go into play -- or the  
13 transition process that would go into play  
14 at the end of the transition period. which  
15 we're basically talking under the current  
16 Interim Rules as they structured it in the  
17 previous issues about what the transition  
18 period is. it's in September '05  
19 So at the end of September at the  
20 end of that transition period. those  
21 elements are no longer available I mean.  
22 it's not like this is a big surprise I  
23 mean. the interconnection agreement. as  
24 we're negotiating here. fully tells you at  
25 the end of the transition period. this

1 A Because the switching eliminated element's  
2 no longer available. It's not an  
3 available offering  
4 Q Why not?  
5 A Because it's been eliminated. BellSouth  
6 would not have an obligation to provide it  
7 pursuant to the 251 obligation  
8 Q At page 58 of your November 12th  
9 testimony. at lines 18 to 19  
10 A Uh-huh  
11 Q You say. if the Joint Petitioners submit  
12 an order to transition other eliminated  
13 elements to a comparable service within 30  
14 days of the expiration of the transition  
15 period. I just want to focus on that.  
16 What would be a comparable service?  
17 A Special access. I mean. this is  
18 addressing elements vacated. other --  
19 eliminated other than switching eliminated  
20 elements that we talked about. That  
21 basically there's not a resale option for  
22 them. It's a wholesale tariffed offering  
23 that's available out there  
24 Q Is dedicated transport one of these  
25 elements?

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1 needs to happen. As far as identifying  
2 those circuits that need to be  
3 transitioned. keeping up with. you know.  
4 what you're getting as a UNE that most  
5 likely -- or will be or next week may be  
6 eliminated. whatever. will be known  
7 Q But after those 30 days --  
8 A Uh-huh  
9 Q -- a Petitioner's still on a switching  
10 eliminated element. are they out of  
11 compliance with the law?  
12 MR MEZA. Object to the form  
13 A They would be -- I don't know if I can  
14 speak to whether they'd be out of  
15 compliance with the law. but if the  
16 agreement has provisions for what happens  
17 at the end of 30 days. I mean. we would  
18 have the right. based on our language. to  
19 bill you the higher rate for the new  
20 comparable service. the resale rate. back  
21 to the date that you -- the end of the  
22 transition period  
23 Q Why is it important that a Petitioner  
24 transition from a switching eliminated  
25 element to something else?

1 A Yes  
2 Q What would other elements be?  
3 A Could be an EEL. If an EEL is no longer  
4 available. special access  
5 Q And the 30-day period. was that also  
6 created or derived by the interconnection  
7 people at BellSouth?  
8 A Yes  
9 Q Do you know the reason that they chose 30  
10 days as the number?  
11 A It's the same window of time that was the  
12 switching windows. for the same reason  
13 Q And at line 21 on this same page. you say  
14 that the charges set forth in BellSouth's  
15 FCC No. 1 tariff would apply. Is that the  
16 special access tariff?  
17 A Yes. that's where our special access  
18 services are available. through that  
19 tariff. yes  
20 Q Do you know whether discounts are  
21 available under that tariff?  
22 A There may be some pricing -- different  
23 pricing terms and conditions based on  
24 volume and term. I'm not familiar with  
25 the details of that. different pricing

65 (Pages 405 to 408)



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1 plans for special access customers only  
2 Q Do you know whether the rates in FCC  
3 Tariff No. 1 were created with -- under  
4 TELRIC principles?  
5 A I don't believe they were. no  
6 Q Do you know if they were created in  
7 accordance with any standard?  
8 A Well, they're on file with the FCC  
9 whatever the obligations are to provide  
10 supporting information relative to when we  
11 filed the tariff just and reasonable  
12 I'm not familiar with any specific  
13 standards relevant to our FCC tariffs or  
14 how that process works for them to be  
15 approved  
16 Q Must the rates be just and reasonable?  
17 A Again, I'm not sure the determination the  
18 FCC would make in evaluating our rates  
19 whether it's just and reasonable standard  
20 and -- I just don't know the details of  
21 that  
22 Q Do you know if any federal statute  
23 outlines the standard for the pricing in  
24 Tariff No. 1?  
25 A Not specifically. I mean, possibly

1 period. But this happens immediately and  
2 we're not at the end of the transition  
3 period. the Interim Rules are vacated.  
4 then the obligation for BellSouth to  
5 provide those elements has been eliminated  
6 for the same reasons. move off 30 days.  
7 all the basic same criteria above would  
8 apply  
9 Q In the event that the Interim Rules Order  
10 was vacated, would BellSouth be obligated  
11 to cease providing those UNEs?  
12 A No, we wouldn't be obligated to cease  
13 providing, but that would be our option  
14 since we would no longer have an  
15 obligation to provide them at TELRIC  
16 rates, those terms and conditions  
17 Q And if the Interim Rules Order were  
18 modified by a court, why would the Joint  
19 Petitioners immediately transition from  
20 certain elements?  
21 A I think modifies is intended to mean that  
22 they may have changed something that --  
23 frozen element or impacted what the  
24 decision was in the Interim Rules Order  
25 I mean, it could be short of vacating. It

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1 section 201, 202 may apply just because  
2 it's general, nondiscriminatory, just and  
3 reasonable provision  
4 Q At page 59 of this testimony --  
5 A Uh-huh  
6 Q -- at lines 23 to 24 --  
7 A Yeah  
8 Q -- it states that, in the event a court of  
9 competent jurisdiction modifies or vacates  
10 the Interim Rules Order, the Joint  
11 Petitioners shall immediately transition  
12 several elements  
13 A Uh-huh  
14 Q Why would the Joint Petitioners  
15 immediately transition?  
16 A Well, this is in a context if the Interim  
17 Rules Order is vacated, thereby those  
18 elements that were frozen, if you will  
19 but -- now they become eliminated under  
20 this process, because we're no longer  
21 obligated to provide them, we would  
22 effectuate the same transition that we  
23 discussed above with the switching  
24 eliminated elements and other eliminated  
25 elements after the end of the transition

1 could be they modified one thing that  
2 causes us to not have an obligation to do  
3 something in the Interim Rules Order. To  
4 me, it would have to be looked at as far  
5 as what was modified and how it impacts  
6 Does it result in us no longer having an  
7 obligation to provide an element  
8 Q If the Interim Rules Order were only  
9 remanded, would the Joint Petitioners have  
10 to immediately transition?  
11 A If the Interim Rules Order was remanded?  
12 It means it's still in effect. Again, I'm  
13 not an attorney, but I believe the fact  
14 that it didn't do away with the Interim  
15 Rules Order, the Interim Rules Order would  
16 still be in effect and just it would be  
17 remanded back to fix it, do it over, or  
18 change it  
19 Q And would the Petitioners have to  
20 immediately transition in that event?  
21 A Without seeing the whole context of  
22 whatever order was modifying the Interim  
23 Rules Order, to see it in its context, I  
24 don't know that you could say it was  
25 explained later that they would or they

66 (Pages 409 to 412)

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1 wouldn't. It would have to depend on what  
2 modification it had or the remand -- or  
3 the whole context of the order. It could  
4 be they remanded it but in the meantime  
5 they may have done something different to  
6 change it.  
7 Q Do you know whether it's permissible for a  
8 court to rewrite a federal agency's rule?  
9 A I have no idea.  
10 Q Do you know if a court has ever done so?  
11 MR MEZA Object to the form.  
12 A I have no idea.  
13 Q Does BellSouth know which facilities the  
14 end users are leasing from it?  
15 A Certainly.  
16 Q How does it know that?  
17 A We bill the Joint Petitioners for those  
18 facilities every month.  
19 Q Does BellSouth know the terms under which  
20 those elements are provided to  
21 Petitioners?  
22 A It would be pursuant to the  
23 interconnection agreement with the Joint  
24 Petitioners.  
25 Q But would it -- can BellSouth discern

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1 whether something is being provided as a  
2 UNE?  
3 A Yes.  
4 Q Let's turn to page 62 of your November  
5 12th testimony. At lines 22 to 25, you  
6 state that, consistent with the FCC's  
7 errata to the Triennial Review Order,  
8 there is no requirement to commingle UNEs  
9 or UNE combinations with services, network  
10 elements, or other offerings made  
11 available only pursuant to Section 271 of  
12 the 1996 Act. Do you see that?  
13 A Yes.  
14 Q On what do you base that position?  
15 A Paragraph 584 of the TRO as it was  
16 modified by the errata in September '03.  
17 (DEPOSITION EXHIBIT NO. 18 WAS MARKED.)  
18 Q I'm handing you a document that's been  
19 marked Exhibit 18.  
20 A Yes.  
21 Q Do you recognize this document?  
22 A Yes, I do.  
23 Q What is it?  
24 A This is the FCC's errata to their  
25 Triennial Review Order.

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1 Q This is --  
2 A I'm sorry.  
3 Q This is the errata to which you refer in  
4 your testimony?  
5 A Yes.  
6 Q And which part of this errata are you  
7 relying on for the statement that you make  
8 at page 62?  
9 A It would be paragraph number 27 on page 3.  
10 Q And what in that paragraph?  
11 A Well, they changed the sentence that was  
12 in their original Triennial Review Order  
13 to read as follows here. You look at the  
14 original Triennial Review Order, which I  
15 state on page 23 of my testimony. I cite  
16 what the original language said in  
17 paragraph 584, and then this errata order  
18 that you just gave me identifies what it  
19 should be changed to read, which excludes  
20 any requirement to commingle UNEs or  
21 combinations with network elements  
22 unbundled pursuant to 271.  
23 Q I'm handing you a document that's been  
24 marked as Exhibit 19.  
25 (DEPOSITION EXHIBIT NO. 19 WAS MARKED.)

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1 A Uh-huh.  
2 Q Do you recognize this document?  
3 A It appears to be the cover page of the  
4 Triennial Review Order and -- starting  
5 paragraph 579. Uh-huh.  
6 Q So is it 584 in this exhibit on the page  
7 marked 370 at the bottom that the errata  
8 provision that you just read effects?  
9 A Yes. The first sentence of that paragraph  
10 584, yes.  
11 Q Can you turn to page 2 of that exhibit,  
12 please, which is marked 365 at the  
13 bottom. And this is the paragraph of the  
14 TRO Exhibit 19.  
15 A Okay. What page?  
16 Q It's the second page of the exhibit, but  
17 in the bottom it's marked 365.  
18 A Yes.  
19 Q And here begins a section entitled,  
20 general commingling issues for  
21 transmission facilities.  
22 A Yes.  
23 Q Can you read the first sentence of  
24 paragraph 579, please?  
25 A We eliminate the commingling restriction.

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1 that the commission adopted as part of the  
2 temporary constraints in the supplemental  
3 order clarification and apply to  
4 stand-alone loops and EELs  
5 (DEPOSITION EXHIBIT NO 20 WAS MARKED )  
6 Q I'm handing you a document labeled Exhibit  
7 20 Do you recognize this document?  
8 A It appears to be a cover sheet of the  
9 Triennial Review Order along with the  
10 final rules, appendix B which is  
11 reflected as final rules  
12 MS JOYCE Let the record reflect  
13 this is an excerpt It's not all of the  
14 rules  
15 Q Can you turn to the sheet that's got a  
16 little green flag on it, please And it  
17 says page 3 at the bottom  
18 A Yes  
19 Q And do you see that there's a heading, it  
20 says section 51 309 use of unbundled  
21 network elements?  
22 A Yes  
23 Q Can you read the sub part E that appears  
24 on that page please?  
25 A Except as provided in section 51 318 an

1 two elements to be connected?  
2 MR MEZA Object to form  
3 A Well that transport element --  
4 (INTERRUPTION )  
5 Q Continue  
6 A Well that transport element is also  
7 provided pursuant to our tariff  
8 Transport is a tariffed offering, is a  
9 wholesale tariffed offering, so I don't  
10 know if that's a good example You can  
11 commingle a UNE in 251 a UNE, UNE  
12 combination with a wholesale tariffed  
13 service, and we're complying with that  
14 The objection is -- and the fact that the  
15 FCC modified the language in the Triennial  
16 Review Order to remove any obligation to  
17 commingle UNEs -- 251 UNEs and UNE  
18 combinations with elements that are only  
19 provided pursuant to 271, switching We  
20 don't offer switching as a tariffed  
21 service in and of itself  
22 Q Could a CLEC commingle an element that it  
23 got under 251 with an element from a  
24 special access tariff?  
25 A Yes

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1 incumbent LEC shall permit a requesting  
2 telecommunications carrier to commingle an  
3 unbundled network element or combination  
4 of unbundled network elements with  
5 wholesale services obtained from an  
6 incumbent LEC  
7 Q So having read paragraph 579 in this rule  
8 is it your position that there should be  
9 no commingling by a CLEC?  
10 A We're not saying we're not going to  
11 commingle for a CLEC We're saying we're  
12 not going to commingle UNEs in  
13 combinations with elements that are only  
14 available for 271 I think the FCC's been  
15 quite clear that there's not unbundling --  
16 or a combination requirement for 271  
17 elements  
18 Q If BellSouth did not permit -- strike  
19 that  
20 If a CLEC obtains a network  
21 element pursuant to Section 251 and on --  
22 and let's say that that element is a loop  
23 for argument sake and the same CLEC  
24 obtains an element of transport under  
25 Section 271, would BellSouth permit those

1 Q To your knowledge, is there anything in a  
2 special access tariff that is required to  
3 be provided under Section 271?  
4 A Transport is, but it's also provided as a  
5 wholesale service a tariff service  
6 offering It's not only provided pursuant  
7 to 271 It's provided in both places  
8 Q Is it ordered out of the same tariff in  
9 those instances?  
10 A Well if -- currently BellSouth's  
11 position is if we're not obligated to  
12 provide transport as a 251 element the  
13 place you'd go to get that functionality  
14 or that service would be out of our  
15 tariff So that's how we offer that 271  
16 element is through our interstate tariff  
17 Q There's not a separate 271 tariff?  
18 A Correct  
19 Q Are there any elements that BellSouth  
20 provides under 271 that are not in a  
21 tariff?  
22 A Switching  
23 Q And is that the only one?  
24 A That's the only one I can think of at the  
25 moment

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1 Q How could a CLEC obtain -- strike that  
2 Is there any way for a CLEC to  
3 obtain switching from BellSouth?  
4 A Through a commercial agreement or as a  
5 resale offering  
6 Q Who performs the act of commingling?  
7 A Again, I'm not a network technical person  
8 but the idea would be they'd order a  
9 loop Based on the terms and conditions  
10 of their agreement, they'd order a loop  
11 And on that order they'd also -- whether  
12 it's on that same order or a separate  
13 order they'd order the wholesale service,  
14 the transport say out of the tariff  
15 And how those orders get related and  
16 worked and -- I can't speak to that  
17 detail, but they would get provided in  
18 whatever fashion we set up to commingle  
19 them  
20 Q Is there a difference between commingling  
21 and combining?  
22 A Typically, the -- my understanding of the  
23 term commingling is one element provided,  
24 like a 251 element UNE with a non-251  
25 element or a wholesale service The

1 obligation to provide 271 elements would  
2 be -- the rates we'd charge would be  
3 pursuant to a commercial agreement How  
4 that would be laid out in that agreement  
5 -- 271 is not a 251 obligation So the  
6 process to do that I'm not familiar with  
7 how that would be done It would have to  
8 be I guess, in the context of whatever  
9 that commercial agreement said they could  
10 do  
11 Q But BellSouth's position is that you can't  
12 put a 251 UNE with a 271 element, do I  
13 have that right?  
14 A Well our position is we're not obligated  
15 to commingle a 251 UNE or UNE combination  
16 with a 271 -- with an element that is  
17 only provided pursuant to 271  
18 Q Does BellSouth have an obligation to  
19 commingle an element provided under 271  
20 and an element provided under 271?  
21 A I mean we have -- I don't believe we do  
22 but I don't believe the combining --  
23 well, I'm getting confused here with  
24 combining and commingling again  
25 I mean, the combining rules do not

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1 combined -- combinations are typically  
2 referred to in UNE plus a UNE or a 251 UNE  
3 with another UNE would be a UNE  
4 combination  
5 Q Aside from the statutory provision under  
6 which they're provided is there any  
7 difference between a combination and a  
8 commingled set of loops?  
9 A Is there any difference between a  
10 combination and a commingled set? A  
11 commingled would be -- could be a UNE --  
12 or would be a UNE with a non-UNE, which  
13 would be your 251 UNE with a wholesale  
14 service -- transport service, say for  
15 example  
16 A combination would be like I  
17 said before a UNE plus a UNE And I  
18 think the commingling definition set forth  
19 in the final rules clearly identifies what  
20 commingling is  
21 Q Would Petitioners be permitted to  
22 commingle two elements that they obtained  
23 under Section 271?  
24 A Commingled two elements they obtain -- I  
25 mean I guess, for the most part our

1 apply to 271 elements There's no duty to  
2 combine 271 elements Whether you're  
3 saying is there an obligation to commingle  
4 two 271 elements, based on this definition  
5 as I see it in the FCC's definitions, I  
6 don't see that that -- this is talking  
7 about involving a UNE -- a 251 UNE  
8 MR MEZA Could we take a break  
9 when you have a chance?  
10 MS JOYCE Let me ask one more  
11 question, and then you can take a break  
12 MR MEZA Okay  
13 Q Is it possible for Joint Petitioners to  
14 commingle two BellSouth network elements?  
15 MR MEZA Object to form  
16 A Is it possible for the Joint Petitioners  
17 to commingle two network elements?  
18 Q Yes  
19 A I mean they can commingle/combine 251  
20 UNEs or we'll do it for them or they can  
21 combine a 251 element -- combine/commingle  
22 with a service that's provided pursuant to  
23 wholesale But back to the cannot combine  
24 or commingle an element provided pursuant  
25 to 251 with an element that's only

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1 provided pursuant to 271  
2 Q Is it your opinion that BellSouth performs  
3 the act of commingling?  
4 A I mean ordering the parts from us I  
5 believe we would I think whatever -- we  
6 modified our interstate tariff to say that  
7 we would do commingling compliant with  
8 the TRO You're ordering the parts from  
9 us  
10 Q If Petitioners wanted to put two elements  
11 together both of which were provided  
12 pursuant to 271 would that be  
13 permissible?  
14 A It would depend on under what type of an  
15 agreement we have to provide those 271  
16 elements Those 271 elements are not  
17 provided pursuant to this interconnection  
18 agreement It would be outside the scope  
19 of this interconnection agreement We  
20 would have to have a separate agreement if  
21 you're going to obtain 271 elements  
22 setting forth the rates the terms, and  
23 conditions for which we would provide  
24 those 271 elements Then whether that  
25 entails multiple 271 elements that will

1 could Petitioners do the work to put  
2 together a 251 element with a 271 element?  
3 MR MEZA Object to the form  
4 A Again, it would be whatever the agreement  
5 says I mean, if Petitioners want an  
6 element that is typically a 251  
7 obligation, like a loop, and they want to  
8 combine it with switching, which is a 271  
9 obligation, we offer that through a  
10 commercial agreement a UNE platform  
11 That would govern the terms and conditions  
12 provided It's no longer a 251 UNE with a  
13 271 It's a UNE platform commercial  
14 offering So that loop, that is also  
15 available as a 251 loop it suddenly  
16 becomes when it's provided under the  
17 interconnect or the commercial agreement  
18 is bound by that intercommercial agreement  
19 and whatever terms and conditions are set  
20 there It's no longer a 251 UNE combined  
21 with a 271 UNE In that agreement it's a  
22 commercial offering, DSO platform,  
23 whatever it's called, that we make  
24 available But it's not bound by --  
25 whatever obligations we have for that loop

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1 allow you to put together or we'll put  
2 together for you, would be based on  
3 whatever the terms of that commercial  
4 agreement involve  
5 Q If the commercial agreement permitted it,  
6 you know expressly said so, could the  
7 Petitioners essentially perform the work  
8 to link two Section 271 elements together?  
9 A I mean, I think whatever ability you have  
10 to combine elements provided pursuant to  
11 271 would be what -- however it's set  
12 forth in that agreement Whether that's  
13 physically y'all taking the wires and  
14 putting them together or we do it would  
15 have to be laid out there to the  
16 understanding between the parties of who  
17 does what and how that gets done I mean,  
18 I can't speak to the network of your  
19 technician comes and does something with  
20 our technician and how all that would be,  
21 but I would say it would be effectuated  
22 however the agreement reads to do that, if  
23 that's doable  
24 Q And if the agreement would -- stated  
25 that -- if the agreement provided for it

1 under 251 do not extend into that  
2 commercial agreement  
3 Q Could that same permission be effected in  
4 an interconnection agreement?  
5 A I mean, the parties can agree, if we so  
6 choose, to put anything we want in an  
7 interconnection agreement but BellSouth  
8 does not have an obligation to provide an  
9 element as a 251 element We're not going  
10 to include it in their interconnection  
11 agreement It should be pursuant to the  
12 obligations of 251  
13 MS JOYCE Okay Let's take a  
14 break  
15 (RECESS )  
16 BY MS JOYCE  
17 Q Why would multiplexing equipment be  
18 attached to a commingled circuit?  
19 A Multiplexing equipment would be necessary  
20 if you need to connect a lower band width  
21 circuit or facility to a higher band  
22 facility, for example, a DS-1 with a DS-3  
23 so it could be aggregated up, if you will  
24 Q Let me draw your attention back to the  
25 draft of attachment 2, KKB-1

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1 A I've got it  
2 Q It's in your exhibit I think it's an  
3 exhibit I think it's the second page of  
4 the exhibit labeled page 3 at the bottom  
5 A Uh-huh  
6 Q You see there's a section 1 1 2 that  
7 states that nonqualifying service as  
8 defined in the FCC's rules  
9 A Yes  
10 Q And then following 1 1 3 qualifying  
11 service is defined as as defined in the  
12 FCC's rules  
13 A Yes  
14 Q And then on page 4 at the top of the page,  
15 it discusses the sole purpose of providing  
16 nonqualifying service but may use a UNE to  
17 provide a nonqualifying service if it is  
18 using such UNE to provide a qualifying  
19 service  
20 A I see that  
21 Q Do you see that?  
22 A Uh-huh  
23 Q And this is the state of the agreement as  
24 of today --  
25 A Yes

1 whatever the jurisdiction whether it be  
2 an agreement or tariff for that higher  
3 band width service transport the  
4 multiplexing goes with the transport  
5 Q And what is the significance of your  
6 testimony that for a commingled circuit it  
7 should be billed at the higher band width  
8 service?  
9 A Like I said earlier, the need for a  
10 multiplexor is when you've got a lower  
11 band width service, like a DS-1 that is  
12 being commingled with a higher band width  
13 circuit like DS-3 A multiplexor is  
14 required as an option of the higher band  
15 and transport service It's not part of  
16 the loop It's required because you're  
17 going from a lower band width aggregating  
18 up to a higher band width  
19 Q What rates would apply at the higher band  
20 width service?  
21 A Well, however that transport's being  
22 provided if it was being provided  
23 pursuant to a tariff or to an agreement  
24 whatever multiplexing is associated in  
25 that offering -- that transport offering

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1 Q -- is that your understanding?  
2 A That's what's been exchanged between the  
3 parties, BellSouth provided to the Joint  
4 Petitioners  
5 Q Do you believe that the qualifying service  
6 rules of the FCC are still in effect?  
7 A Give me a second  
8 My reading of the conclusions from  
9 the USTA II is that the commission's --  
10 commission being FCC -- distinctions  
11 between qualifying and non-qualifying or  
12 qualifying services were vacated  
13 Q On page 65 of your November 12th  
14 testimony, you state that multiplexing  
15 equipment -- and I'm going to  
16 paraphrase -- should be billed as the  
17 higher band width service Do you see  
18 that?  
19 A Yes I see that  
20 Q And why does BellSouth take that position?  
21 A The reason you have multiplexing is  
22 associated with the transport service that  
23 is being provided The higher band width  
24 service in this situation is a commingled  
25 loop, commingled with transport facility.

1 Multiplexing is an option of transport  
2 Q Could the higher band width service be  
3 provided as a UNE?  
4 A It could, in the case if the EELs were  
5 still available and we're providing a DS-1  
6 EEL, DS-1 loop An EEL that comprised of  
7 a DS-1 loop with DS-3 transport  
8 multiplexing would be included in that  
9 but it's still associated with transport  
10 service And in that case if it's an  
11 EEL, both -- all parts -- components of  
12 that EEL would be based on -- as there  
13 being a UNE combination  
14 Q So is it your testimony that the rate for  
15 the mux-ing m-u-x matches the type of  
16 the band width service that it's being  
17 used for? In other words, if it's a  
18 special access higher band width service,  
19 then the mux-ing is a specialized access  
20 mux-ing service?  
21 A Yes  
22 Q And if it's a UNE higher band width  
23 service, then the mux-ing would be a UNE  
24 mux-ing?  
25 A Yes

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1 Q Are you familiar with how state  
2 commissions set their rates for UNE  
3 mux-ing?  
4 A I believe in the UNE proceedings we  
5 proposed rates for EELs apart -- the  
6 elements that make up an EEL, the loop,  
7 the transport, and then whatever  
8 multiplexing for those types of EELs that  
9 have a lower band width circuit with a  
10 higher band width circuit like a DS-1  
11 with a DS-3. So we would include it in  
12 there that mux-ing capability as parts of  
13 that EEL.  
14 Q And were the rates in that situation set  
15 in compliance with TELRIC?  
16 A Yes, they were provided in context of an  
17 EEL that is comprised of a lower band  
18 width circuit with a higher band width  
19 circuit. The mux-ing as part of that  
20 EEL would be at TELRIC.  
21 Q Are you aware of whether state commissions  
22 have set rates for special access mux-ing?  
23 A Mux -- Multiplexing is an option of  
24 transport service. So if there's service  
25 been established or transport is an

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1 offering in a tariff, it would also have a  
2 mux-ing option, multiplexing option,  
3 associated with that service.  
4 Q And the rates for that service, were they  
5 set in accordance with TELRIC?  
6 A No.  
7 Q Can a Joint Petitioner choose whether it  
8 wants to use special access mux-ing versus  
9 UNE mux-ing?  
10 A The mux-ing would be associated with  
11 whatever jurisdiction or -- they're able  
12 to get the transport service. If  
13 they're -- If transport is available as a  
14 UNE and still offered as a UNE, then the  
15 mux-ing that goes with it would also be  
16 available as a UNE. If it's not offered  
17 as a UNE, the only way to get it, if it's  
18 made available, would be through the  
19 tariff offering, special access, then  
20 mux-ing associated with that special  
21 access transport service would be out of  
22 the tariff.  
23 Q On page 66 of your November 12th  
24 testimony, at line 17 to 18, you state  
25 BellSouth, in accordance with normal

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1 industry practices, installs the  
2 multiplexer when the higher band width  
3 facility is installed. Do you see that?  
4 A Yes.  
5 Q Which normal industry practices are you  
6 referring to?  
7 A The telecommunications industry.  
8 Q Are those practices codified anywhere?  
9 A I would imagine they would be somewhere as  
10 far as how we install transport services  
11 in those facilities and how we abide by  
12 our tariffs and offerings that we make  
13 available through them, how we provision  
14 multiplexing associated with the higher  
15 band width facility.  
16 Q Does BellSouth typically provision  
17 facilities in accordance with normal  
18 industry practices?  
19 A I would assume so, yes.  
20 Q If the Joint Petitioners were to order  
21 mux-ing to take DS-1 level EELs to DS-3  
22 level, would that mux-ing be billed on a  
23 DS-1 level?  
24 A Let me understand your predicate with that  
25 question. You said a DS-1 EEL. And an

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1 EEL is comprised of a loop and transport.  
2 So are you asking if the EEL is  
3 comprised -- if it's an EEL, it's all  
4 UNE. If you're combining a loop, which is  
5 a stand-alone UNE, with a special access  
6 transport service, that's not an EEL. So  
7 I guess let me ask -- maybe ask your  
8 question again.  
9 Q Let me put it this way.  
10 A A commingled circuit, but it's not an  
11 EEL. An EEL is a combination of elements.  
12 Q If a Joint Petitioner were to have an  
13 EEL --  
14 A Okay.  
15 Q -- that is a DS-1 loop and DS-3  
16 transport --  
17 A Uh-huh.  
18 Q -- Would the mux-ing associated with that  
19 EEL be at the DS-1 level?  
20 A No. It would be at the DS-3 level or  
21 whatever that mux-ing -- multiplexer rate  
22 was established for that migration from a  
23 DS-1 to a DS-3. It's tied to the  
24 transport.  
25 Q And on which part of the EEL is the mux

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1 charge assessed?  
2 A Well there's -- it's whatever rate --  
3 on an EEL. it's whatever rate the  
4 commission established for that  
5 combination of UNEs. which is the EEL So  
6 there's a set rate for that multiplexing  
7 in that EEL It doesn't vary It's been  
8 established by the commission It's  
9 whatever it is If it's a DS-1 to a DS-3  
10 mux. that's the rate. if it's DS-0 to DS-3  
11 mux. that's the rate Whatever it was  
12 established in the UNE proceedings  
13 pursuant to it being part of the EEL and  
14 being TELRIC that's the rate that would  
15 apply In other words --  
16 Q So --  
17 A I'm sorry  
18 Q And would it apply on a per DS-3 basis. a  
19 charge for each DS-3?  
20 A I'm not sure how it's a charge -- It's  
21 whatever the elemental rates are for that  
22 EEL I mean, there's the loop, you pay a  
23 monthly rate, transport you pay mileage,  
24 you pay facility termination, you pay --  
25 whatever the mux-ing is. I'm not sure if

1 A Yes  
2 Q Does that indicate that the quoted  
3 definition comes from that source?  
4 A Yes  
5 Q Why did you provide the definition of a  
6 loop in this portion of your testimony?  
7 A Well again the emphasis is added on the  
8 fact that it needs terminate -- the loop  
9 needs to terminate at the demarcation  
10 point at an end-user customer premises  
11 Q Do you provide the definition of an EEL in  
12 your testimony?  
13 A I don't -- I provide -- the first  
14 sentence that an EEL is a loop transport  
15 combination specified in 575 of the TRO  
16 I didn't provide a quoted cite We could  
17 look at 575  
18 Q Do you know what the rules are that apply  
19 to EEL provisioning?  
20 A Rules that apply to the EEL provisioning?  
21 I mean, there's eligibility criteria that  
22 was established in the TRO as to how a  
23 CLEC can use an EEL, if that's what you  
24 mean  
25 Q Were those eligibility criteria -- strike

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1 it's a per mile rate or if it's a flat  
2 rate, monthly rate, but you pay But  
3 whatever that rate is that was established  
4 that is attaching that DS-1 loop to DS-1  
5 transport, UNEs to EEL, it's the rate that  
6 was established, and that's what would be  
7 billed  
8 Q So you don't know if it applies on a  
9 DS-1 -- is billed per the DS-1 versus the  
10 DS-3?  
11 A It's billed per the EEL The EEL is that  
12 combined element It's that combination  
13 And as part of that combination it's  
14 included in that combination Whether  
15 it's billed -- attached or billed -- but  
16 it's associated with the higher band width  
17 of that EEL  
18 Q Please turn to page 68 of your November  
19 12th testimony  
20 A Okay  
21 Q And you provide at lines 12 to 15 a  
22 definition of a loop Do you see that?  
23 A Yes  
24 Q You have a citation at line 15 to TRO at  
25 note 620 emphasis added

1 that  
2 Are those eligibility criteria  
3 still in effect?  
4 A Well, it's somewhat confusing because, to  
5 me, the EEL, being comprised of transport  
6 and loop the requirements of unbundled  
7 transport have been vacated By nature of  
8 that vacation -- it's not a word but --  
9 the vacatur -- an EEL, as it's defined as  
10 a loop in transport, would not be  
11 available However in light of the  
12 Interim Rules Order or during the interim  
13 period we're complying with the Interim  
14 Rules Order making those available  
15 Q Can you please pick up the exhibit that is  
16 the attachment 2?  
17 A Yes I have it  
18 Q What is that exhibit number?  
19 A 17  
20 Q 17 And turn to page 59  
21 A Okay  
22 Q And let's look at section 5 2 5 2 1  
23 5 2 5 2 1  
24 A Yes  
25 Q Now, there's language provided by the

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1 CLECs in this section. and it states that  
2 each circuit to be provided to each  
3 customer will be assigned a local number  
4 prior to the provision of service over  
5 that circuit. Do you see that?  
6 A Yes  
7 Q Do you see that in the BellSouth version  
8 it's the same except that the word  
9 customer was replaced with words end user?  
10 A Yes  
11 Q Why was that change made?  
12 A Well --  
13 MR MEZA Object to the form  
14 A -- BellSouth's proposal is that an EEL  
15 which is comprised of a loop and  
16 transport must terminate to an end user  
17 This gets to -- somewhat related to Issue  
18 2. obviously, in what's the definition of  
19 an end user by the Joint Petitioners  
20 seeking for it to be customer, which may  
21 not necessarily be the same thing as an  
22 end user, whereby a loop is required to  
23 terminate to the end-user customer's  
24 premises  
25 Q Do you know whether the definition of a

1 it. I think  
2 Q Can you read for me on page 152 the very  
3 top the sentence beginning consistent  
4 with the definition?  
5 A Yes Consistent with the definition the  
6 Commission adopted in the UNE Remand  
7 Order this complete transmission path  
8 between the incumbent LEC's main  
9 distribution frame, parens or its  
10 equivalent, close parens, and its central  
11 office for the demarcation point at the  
12 customer's premises also includes the  
13 features functions and capabilities of  
14 the copper loop  
15 Q Is the word end user in -- words end  
16 user, do they appear in paragraph 249?  
17 A No The word end user does not appear in  
18 that paragraph However, it's referencing  
19 its definition adopted in the UNE Remand  
20 Order  
21 Q The definition that you provided at page  
22 68 of your November 12th testimony uses  
23 the words end-user customer premises  
24 A Yes  
25 Q Do you know why that verbiage was not used

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1 loop appears anywhere else in the  
2 Triennial Review Order?  
3 A I'm sure it does As far as cites back to  
4 it. I have no clue everywhere the loop is  
5 defined  
6 Q I believe it was an exhibit from  
7 yesterday  
8 A Uh-huh  
9 MR MEZA What are you looking  
10 for Stephanie?  
11 MS JOYCE It's an exhibit that's  
12 an excerpt from the TRO  
13 A Exhibit 9?  
14 Q 9 Is Rule 51 319 depicted there?  
15 A I'm sorry?  
16 Q Is Rule 51 depicted there?  
17 A No This is just paragraph 249  
18 Q And --  
19 MR MEZA What, you want the rule  
20 or you want the TRO?  
21 MS JOYCE In paragraph 249, what  
22 you have in front of you  
23 MR MEZA It's Exhibit 9  
24 THE WITNESS Uh-huh  
25 MR MEZA Go ahead I'll find

1 in the section that I've drawn your  
2 attention to in the attachment 2 draft?  
3 A I cannot speak to why the FCC chose to use  
4 certain words in certain paragraphs versus  
5 certain words in another paragraph  
6 Q No, I'm sorry My question is, given the  
7 definition you quoted in your  
8 testimony --  
9 A Uh-huh  
10 Q -- do you know why that same verbiage was  
11 not used here in this agreement?  
12 Do you have it in front of you?  
13 We've looked at section 5 2 5 2 1  
14 A Well are you talking about why it says  
15 each circuit to be provided to each end  
16 user --  
17 Q Yes  
18 A -- or why it doesn't say end-user  
19 customer's premises?  
20 Q Yes  
21 A I think by the definition we've concluded  
22 generically is end user The end user is  
23 the ultimate user of the service so it  
24 would be end-user customer's premise I  
25 mean, the same thing I mean, the term is

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1 end user And if it's at the end  
2 user's -- the end user -- wherever they  
3 reside is their premises. the end-user  
4 customer's premises I'm not following  
5 your question  
6 Q And so it's BellSouth's position that the  
7 definition of end user is incorporated  
8 into this section?  
9 A Well, our intent of the use of the term  
10 end user is to be consistent with the  
11 requirement that a loop terminate at a  
12 end-user customer's premises  
13 Q But that's not what this section here  
14 says So I'm just wondering exactly what  
15 the intent is of using the words end user  
16 in this section of the agreement?  
17 A The intent is to use the term end user  
18 consistent with the definition of end user  
19 as it's associated with the use of a  
20 loop Depending on what's being provided  
21 to that end user and the context of that  
22 element that's being provided would have  
23 to be consistent with what that element  
24 can be -- how that element can be  
25 provisioned And the loop can be

1 Do you see that?  
2 A Yes  
3 Q For what purpose did BellSouth make that  
4 agreement?  
5 A In an attempt to resolve this issue and  
6 try and better understand why their -- in  
7 my opinion why there's such a concern  
8 about the definition of end user as it  
9 relates to EELs in the whole context of  
10 these two issues  
11 I mean as long as you're meeting  
12 the requirements in order to order  
13 something pursuant to this agreement, we  
14 don't care who you use it with as long as  
15 you're using it in compliance with the  
16 intent and the requirements of using that  
17 element  
18 Q Would BellSouth -- strike that  
19 Why has BellSouth not permitted  
20 Petitioners to obtain an EEL to serve an  
21 end user that was not an ISP?  
22 MR MEZA Object to the form  
23 A Can you say that again? I lost something  
24 in the not  
25 Q Why has BellSouth not agreed to permit

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1 provisioned only to terminate at an  
2 end-user customer premises  
3 Q Is it BellSouth's position that its  
4 proposed language for section 5 2 5 2 1  
5 comports with the definition of a loop as  
6 you've provided it in your testimony?  
7 A Yes I mean this whole section is  
8 dealing with the eligibility criteria and  
9 how things have to be in order to be able  
10 to qualify, if you will, for use of an  
11 EEL The fundamental -- What comprises  
12 an EEL is a loop, and it has a definition  
13 that's clearly set forth by the FCC, and  
14 that's not done away with just by omission  
15 of the term customer premises after the  
16 word end user  
17 Q At the bottom of page 68 of your November  
18 12th testimony  
19 A Yes  
20 Q Beginning at line 21  
21 A Uh-huh  
22 Q You state that BellSouth has agreed to  
23 include language specifically stating that  
24 the Joint Petitioners may use loops and,  
25 therefore, EELs to serve ISP customers

1 Petitioners to obtain an EEL in order to  
2 serve a different kind of company than an  
3 ISP?  
4 MR MEZA Object to form  
5 A I mean you can use an EEL in compliance  
6 with the FCC rules, if it's -- the  
7 EEL -- because the loop has to terminate  
8 to an end-user customer premises, that's  
9 how it needs to be provisioned  
10 Q Is it BellSouth's position that  
11 Petitioners could not use an EEL on a  
12 wholesale basis?  
13 A As long as it's in compliance with the  
14 requirements of how you can use an EEL  
15 meet the eligibility requirements we've  
16 offered to provide that it's available for  
17 wholesale and retail purposes  
18 Q Could an end user ever be a  
19 telecommunications carrier in your  
20 understanding of the word end user?  
21 A By telecommunications carrier, in that  
22 they would use -- that place where it  
23 terminates is not their end user  
24 premises? If it terminates -- I would  
25 not say a telecommunications carrier is an

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1 end user if the -- the attempt is to  
2 terminate that EEL or that loop to their  
3 POP or to a carrier location that's not an  
4 end-user premises  
5 Q What is a premise?  
6 A It's the end point of the call It's  
7 where the service is utilized It's their  
8 location the end-user's customer's  
9 premises  
10 Q It's a location where?  
11 A The end user receives the service  
12 Q Is a POP a premises?  
13 A Not an end-user's premises Maybe a  
14 carrier's premises  
15 Q And why do you draw that distinction?  
16 A Because there's not a demarc -- well,  
17 because they're not the end point of the  
18 use of the service  
19 I mean the carrier's POP is the  
20 carrier's network and it's very clear,  
21 you know, in the TRO that entrance  
22 facilities which previously was included  
23 in the definition of transport could be  
24 used between the BellSouth network and a  
25 carrier's network The TRO eliminated the

1 A Yeah consistent with how a UNE can be  
2 used I mean, UNEs cannot be used as it  
3 was for a long distance service by IXEs  
4 Q And what do you base that position on?  
5 A On the USTA II vacatur Competing carriers  
6 are not entitled to unbundled EELs for  
7 provision of long distance exchange  
8 service  
9 Q Are there UNEs that aren't EELs?  
10 A Sure  
11 MR MEZA Object to the form  
12 A Sure An EEL is a combination of UNEs  
13 Q Can there be a UNE that is not an EEL at  
14 all?  
15 A Yes  
16 Q At page 69 of your November 12th  
17 testimony  
18 A Okay  
19 Q This is testimony that you provided  
20 pursuant to Issue 2-33, is that correct?  
21 A Yes  
22 Q At 14 to 16 -- or to 15, rather, you state  
23 that BellSouth is not obligated to provide  
24 new high-capacity EELs after the interim  
25 period Do you see that?

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1 requirement that transport is inclusive of  
2 an entrance facility So transport is  
3 only -- excludes entrance facilities  
4 Q All right But in the context of a loop  
5 why is a POP not a premises?  
6 A Because it's the point on a carrier's  
7 network It's not a premises  
8 Q But does the entrance facilities rule or  
9 finding have anything to do with a loop in  
10 that situation?  
11 A As it pertains to the transports piece as  
12 far as excluding transport facilities  
13 Q Are there any circumstances in which a  
14 carrier could be an end user?  
15 A Purposes of being eligible to receive UNEs  
16 or qualifying service -- I mean the  
17 intent of a loop is to terminate to an end  
18 user I mean, back to the carrier POP  
19 thing I don't know that they could never  
20 be an end user I guess it just depends  
21 on the service they're providing The  
22 intent of UNEs UNEs are provided for  
23 providing telecom service  
24 Q Do Petitioners not provide telecom  
25 service?

1 A Yes  
2 Q What is a new high-capacity EEL?  
3 A It means newly installed, basically If  
4 -- Joint Petitioners could not -- I  
5 mean, CLEC could not submit an order to  
6 obtain a new EEL -- newly install it after  
7 March 12th It couldn't place an order  
8 after March 12th to install an EEL  
9 Q Does the statement indicate that BellSouth  
10 will not continue to provide existing  
11 EELs?  
12 A No It states we will maintain existing  
13 high-capacity EELs during the transition  
14 period You've got existing ones  
15 They're good through the end of the  
16 12-month transition period set forth in  
17 the Interim Rules Order unless they're  
18 preceded by something in the final  
19 unbundling rules  
20 Q At page 69, further down the page --  
21 A Uh-huh  
22 Q -- you state at lines 18 to 20 that  
23 BellSouth will provide notice to CLPs  
24 stating the cause upon which BellSouth  
25 rests its allegations of noncompliance

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1 A Uh-huh  
2 Q Will that notice -- What will comprise  
3 that notice?  
4 A I don't know the exact words that will  
5 comprise that notice, but we've agreed to  
6 give you what our -- what the cause --  
7 what is causing us to conduct this audit  
8 itself either information or reason to  
9 believe there's a violation based on some  
10 information we've obtained or came across  
11 or discovered regarding whether those EELs  
12 meet the eligibility requirements  
13 criteria  
14 Q Will that information be summarized by  
15 BellSouth in the notice?  
16 A Again I don't know the specific content  
17 of the notice. It's just the agreement  
18 was we would give you what's the cause --  
19 what's causing us to do the audit  
20 Q Will any underlying documentation be  
21 provided with the notice?  
22 A I don't know  
23 Q Will the notice identify which EELs are  
24 suspected to be out of compliance?  
25 A No, they're not

1 circuits are possibly out of compliance?  
2 A Well, I would think we'd have indication  
3 that would come to our attention that  
4 would give us that cause to start the  
5 audit but until we do the audit, we won't  
6 know exactly all the circuits that are out  
7 of compliance. It's basically find one  
8 circuit, there could be there are a  
9 hundred circuits that are out of  
10 compliance. And until you do the audit  
11 you may not find all hundred circuits. It  
12 could be you identify ten circuits that  
13 are out of compliance or that gives you  
14 cause you do the audit and it's only  
15 those ten circuit. Until you do the  
16 audit you don't know the extent of the  
17 out of compliance  
18 Q Do you believe that being able to choose a  
19 vendor provides an advantage to the  
20 choosing party?  
21 A A vendor?  
22 MR MEZA Object to the form  
23 A I'm sorry, a vendor?  
24 Q A vendor  
25 A Any vendor or --

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1 Q Why not?  
2 A Well, the intent of an audit is to advise  
3 that there appears to be something out of  
4 compliance with the criteria. We would  
5 have to have cause some indication that  
6 there is a reason to believe there is  
7 something amiss or out of compliance. To  
8 engage in such examination and tell you  
9 these are the ten circuits if you will  
10 this issue involves may not be all the  
11 circuits. That may be just what we found  
12 that gave us cause to conduct the audit  
13 Again, like I said I don't know the exact  
14 details that would go into the notice  
15 Just saying we've got cause to conduct an  
16 audit we're going to, you know, invoke  
17 that right pursuant to our agreement and  
18 we'll -- the auditor will be contacting  
19 you within 30 days, et cetera. And  
20 they'll set forth the parameters of how  
21 they will conduct the audit, what circuits  
22 will be evaluated and what information is  
23 needed from the parties to conduct that  
24 audit  
25 Q Is it possible for BellSouth to know which

1 Q Choosing your real estate agent, does that  
2 provide an advantage to the person that  
3 did the choosing?  
4 MR MEZA Object to the form  
5 A Advantage over whom?  
6 Q Does it provide a benefit to the person  
7 that did the choosing?  
8 MR MEZA Same objection  
9 A Well I mean I would -- in that  
10 scenario that end-user person has, you  
11 know, choices available to them of who  
12 they pick as their Realtor. So I mean,  
13 they have those alternatives available to  
14 them. So I guess they could weigh one  
15 over another, and whatever benefit's  
16 derived from that by having those choices  
17 and figuring out which one is best for  
18 them is a possibility. But that doesn't  
19 extend to this situation. There's  
20 acceptable accounting practices that  
21 dictate -- I mean that make it that each  
22 auditor is going to have those  
23 qualifications. I don't see a benefit  
24 from us picking one auditor over another  
25 and extending to your example

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1 Q Better for whom?  
2 A I'm sorry?  
3 Q In your answer you said. I don't think  
4 it's any better  
5 A I mean I don't think there's any benefit  
6 to either party by us picking the  
7 auditor We're going to pick the  
8 auditor It's an independent auditor  
9 certified by the IC -- AICPA in  
10 accordance with those standards and any  
11 auditor that meets those qualifications  
12 should be acceptable to both parties  
13 Q Does BellSouth believe that it's important  
14 that the auditor be acceptable to both  
15 parties?  
16 MR MEZA Object to the form  
17 A I mean, selecting the auditor is a right  
18 we have pursuant to the TRO I mean, we  
19 may select the auditor And, again, based  
20 on criteria of qualifications of that  
21 auditor, it should be an independent  
22 decision  
23 Q Decision by whom?  
24 A By BellSouth in picking the auditor, that  
25 it should be in compliance with this

1 this issue sets forth that we will pick  
2 the auditor but it will be an auditor --  
3 an independent auditor -- auditor that  
4 will be in accordance with the standards  
5 of the Institute of CPAs  
6 Q At page 70 at lines 19 to 20  
7 A Yes  
8 Q You state that to subject the selection of  
9 the auditor to the approval of the CLP is  
10 to invite gaming in the form of delay  
11 A Yes  
12 Q Do you see that?  
13 A Uh-huh  
14 Q Why do you make that conclusion?  
15 A Well, if -- if we have to wait for  
16 somebody -- or the Joint Petitioners or  
17 whoever to agree that this audit firm that  
18 meets these standards is good or bad or  
19 they don't like them or whatever, I mean  
20 it just invites delay because they could  
21 say, no, I don't like that one Have to  
22 go find another one Have to solicit for  
23 their business to do the audit And so, I  
24 mean, the premise that we would pick the  
25 auditor, it will be an auditor that's

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1 independent accounting standards and --  
2 established for auditors  
3 Q Does the TRO state that the relevant ILEC  
4 must choose the auditor?  
5 A I don't have the exact words in front of  
6 me, but I think it -- actually, I may  
7 have it right here May obtain Doesn't  
8 say must It says may obtain  
9 Q You're referring to the TRO --  
10 A Uh-huh  
11 Q -- as giving you the right to choose the  
12 auditor?  
13 A They concluded that the incumbent LEC may  
14 obtain and pay for an independent auditor  
15 to audit on an individual basis in  
16 compliance with the qualifying eligibility  
17 criteria in paragraph 627  
18 Q From this language that you quoted in your  
19 testimony --  
20 A Uh-huh  
21 Q -- do you believe the FCC has stated that  
22 the incumbent LEC must pick --  
23 A No  
24 Q -- the auditor?  
25 A No And our language that was proposed in

1 independent, complies with the standards  
2 of auditing it should be acceptable to  
3 both parties  
4 Q Do you think there's any way that the  
5 agreement could prevent the CLECs gaming  
6 in the form of delay?  
7 MR MEZA Object to the form  
8 A Yes by accepting our language that we'll  
9 pick the auditor  
10 Q Is there any other way?  
11 A We could come up with a list of acceptable  
12 auditors that we could pick from I think  
13 was one proposal during some form of  
14 negotiations or discussion as an option,  
15 in which your Big Six audit firms or eight  
16 firms or however many are left these  
17 days  
18 Q If BellSouth did have some information  
19 that gave it cause to seek an audit of EEL  
20 circuits, why would it not provide it to  
21 the CLPs?  
22 A For a couple reasons It may not be an  
23 all-inclusive list of all the circuits  
24 that are in violation or out of  
25 compliance, and it could be construed --

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1 if we had to identify just those that  
2 we're going to audit and we found others  
3 we could be precluded possibly from  
4 including these in this audit, and then  
5 we'd be stuck for another year before we  
6 could audit the additional circuits. And  
7 I think the intent of an audit is to  
8 identify there's cause, conducted the  
9 audit, see what the audit reveals  
10 Q When will -- Under the proposed BellSouth  
11 language, when will the Petitioners know  
12 which circuits are being audited?  
13 A The auditor would contact -- my  
14 understanding of it -- again, I don't know  
15 all the details of the process the auditor  
16 would go through in conducting the  
17 evaluation, but my understanding would be  
18 that the auditor would work with the CLEC  
19 to advise them within 30 days after notice  
20 of which circuits they're planning to look  
21 at  
22 Q Ms. Blake, do you believe that Caller ID  
23 is a valuable service?  
24 A Caller ID --  
25 Q Uh-huh

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1 A -- is a valuable service?  
2 I guess it depends if you like to  
3 know who's calling you or not  
4 Q Do you like to know who's calling you?  
5 A Yeah, Yes  
6 Q Is there a customer demand for Caller ID?  
7 MR. MEZA: Object to form  
8 A I mean, we sell Caller ID. Caller ID  
9 Deluxe. I guess you're more referencing  
10 in related to the name, displaying of the  
11 name, the Caller ID Deluxe retail  
12 product. Yeah, I mean, we have demand for  
13 it. We sell it. It's an offering we make  
14 available in various bundles and packages  
15 to our retail customers  
16 Q Does BellSouth provide Caller ID?  
17 A Yes  
18 Q Is it your expectation that if someone  
19 subscribes to Caller ID, they would expect  
20 it to work?  
21 A That would be -- I would think would be  
22 their expectation, for it to work based on  
23 the description in the tariff or the terms  
24 and conditions for which they're  
25 purchasing it. There may be some

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1 limitations on certain situations where it  
2 won't work or where the number or the name  
3 will not be displayed in some cases  
4 Q What does Caller ID do as a practical  
5 matter? What service does it provide?  
6 A Well, Caller ID is different from Caller  
7 ID Deluxe. Caller ID just takes the  
8 automatic -- ANI, automatic number  
9 identifier, from the signalling and  
10 displays it on a equipment. Caller ID  
11 Deluxe goes beyond that and goes to the  
12 database to get the name associated with  
13 that originating party and transmits that  
14 name in a signal -- I think in a signal  
15 to the same or different CPE equipment  
16 that has that capability  
17 Q So if I had Caller ID at my house, how  
18 would it work? A call would come through,  
19 and what would happen?  
20 A If you had Caller ID and a call came  
21 through, the automatic number identifier  
22 is in the signaling that comes with that  
23 call. So that the line that that's  
24 provisioned over out of central office  
25 would signal -- or provide that telephone

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1 number to the display box. It's calling  
2 name or Caller ID Deluxe, as we call it,  
3 that delays the calling name in addition  
4 to the number, the central office  
5 recognizes that end user has Caller ID  
6 Deluxe. It then sends a query to a  
7 database that has associated with that  
8 originating number and knows where to go  
9 to get the name and deliver -- pulls that  
10 name -- very untechnical, but pulls that  
11 name, and transmits it through the phone  
12 line and displays it on the display box  
13 Q Where does it pull that name from?  
14 A It would be from a database, wherever that  
15 name of that originating party resides  
16 whatever database that name resides in.  
17 And again, that's how it would  
18 work practically. Again, there's other  
19 criteria, depending on if that database --  
20 the terminating telephone provider --  
21 telephone service provider has an  
22 arrangement to go to that database to get  
23 the name  
24 Q Do you know what CNAM is?  
25 A Yes. That's pretty much what we've been

79 (Pages 461 to 464)

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1 talking about Caller ID Deluxe  
2 Q And that stands for Caller ID with name.  
3 is that your understanding?  
4 A Yes calling name  
5 Q And that's a database that is used to do  
6 Caller ID?  
7 A CNAM -- I mean there's CNAM databases as  
8 we refer to them, that house or store --  
9 and have names stored in them  
10 Q So we've discussed the fact that if I  
11 subscribe to Caller ID, what would happen  
12 is various technical functions End  
13 result being I can see the number that's  
14 calling me --  
15 A Yes  
16 Q -- is that right?  
17 A Just the number  
18 Q If I get a call and I can't see that  
19 number, has the service worked?  
20 A No -- I mean, wait Yes, the service has  
21 worked I'm sorry I misunderstood you  
22 Yes, the service has worked  
23 Q Can I see the information that I want to  
24 see?  
25 A It depends on the -- what information is

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1 sent through the automatic number  
2 identifier It could be a situation where  
3 it's out of area or blocked -- a blocked  
4 number, whatever the parameters of the  
5 originating party's service is that may  
6 prevent that number from being displayed  
7 Q What's another reason that the number  
8 wouldn't show up for me?  
9 A I can't -- I mean, if it's part of the  
10 signal as the AI -- automatic number  
11 identifier, ANI is part of the SS7  
12 signalling if it's sent there, it will be  
13 displayed I can't think of any other  
14 technical reason, unless it's blocked at  
15 the originating party's request  
16 Q Are there CNAM databases that BellSouth  
17 does not own or control?  
18 A Yes  
19 Q Does BellSouth go get information from  
20 those databases to provide Caller ID?  
21 A We would get -- go to those databases to  
22 get the names query those databases for  
23 name delivery and those are third-party  
24 databases where we have agreements  
25 Q Does BellSouth have agreements with every

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1 third-party CNAM database provider?  
2 A No we do not  
3 Q Do you know how many it does not have  
4 agreements with?  
5 A I believe we don't have agreements with  
6 the majority We have agreements with  
7 three third-party databases  
8 Q Were there times it had agreements with  
9 all of the third-party databases?  
10 A I don't believe so I mean, there's some  
11 out in you know remote areas or very  
12 small that we wouldn't have access to or  
13 wouldn't have arranged to have access to  
14 Q Do you expect that BellSouth will maintain  
15 its current agreements with third-party  
16 CNAM database providers?  
17 MR MEZA Object to form  
18 A I don't know what the future might bring  
19 in that regard to those relationships and  
20 agreements  
21 Q If BellSouth did not have an agreement  
22 with a third-party CNAM database provider  
23 and a call came in to a BellSouth  
24 subscriber, someone who gets Caller ID  
25 from BellSouth would any information in

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1 that third-party database show up --  
2 A No  
3 Q -- on that end user's --  
4 A You said Caller ID Do you mean Caller ID  
5 Deluxe or Caller ID? Caller ID has  
6 nothing to do with an CNAM database  
7 Caller ID is inherent in the signalling  
8 that comes from the automatic number  
9 identifier So regardless of the  
10 originating end-user name in a database,  
11 we have access to query the number Just  
12 the number will come through the  
13 signalling It's not predicated on having  
14 a database to go to to get a name or get  
15 that number because that number comes with  
16 the signal  
17 Q Do you know whether other carriers  
18 differentiate between Caller ID and Caller  
19 ID Deluxe in their retail offerings?  
20 A No, I have no idea No knowledge of that  
21 Q So if there were information in a  
22 third-party database BellSouth does not  
23 have an agreement with that third party  
24 and a call came in to a BellSouth Caller  
25 ID Deluxe subscriber would the name

80 (Pages 465 to 468)

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1 information from that third-party database  
2 show up --  
3 A No  
4 Q -- on that subscriber --  
5 A No, it would not. The number would but  
6 not the name.  
7 Q On page 75 of your November 12th  
8 testimony, lines 15, 16  
9 A Yes  
10 Q You state that the Petitioners  
11 inappropriately attempt to compare the  
12 situation in the US LEC complaint case,  
13 similar to a pending Sprint complaint  
14 case, to the issues in this arbitration?  
15 A Yes  
16 Q Why is this comparison inappropriate?  
17 A The US LEC complaint involved the existing  
18 agreement whereby the commission was  
19 interpreting the requirement to provide  
20 all features, functions, and capabilities  
21 of the switch in the section of that  
22 agreement to mean that we had to continue  
23 to query databases. We could not -- We  
24 were providing something at the time we  
25 entered that agreement with US LEC. We

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1 couldn't stop providing it, regardless if  
2 we had stopped querying the third-party  
3 database or no longer queried that  
4 third-party database. It's a difference  
5 between language that was in an existing  
6 agreement that was, in our opinion, not  
7 correctly interpreted to require us to do  
8 something beyond what we feel we're  
9 required to do.  
10 And this is the situation here, is  
11 what language needs to go in the agreement  
12 to fully explain our obligations relative  
13 to querying third-party database.  
14 Q Why did the Commission -- the North  
15 Carolina Commission order BellSouth to  
16 keep providing the information?  
17 A They interpreted the US LEC agreement to  
18 impose an obligation on us to not do  
19 something less than what they thought we  
20 had an obligation to do when we entered  
21 the contract.  
22 Q Did the Commission make any findings about  
23 the effect when BellSouth doesn't provide  
24 the Caller ID Deluxe information?  
25 A I don't recall the specific words in their

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1 order, but, I mean, I think they did latch  
2 on to it -- some impact to end users in  
3 general, not just US LEC end users, but  
4 BellSouth. So they were even taking issue  
5 with -- against us not querying databases  
6 that would stop giving names to our end  
7 users as well, so -- but in the context of  
8 this complaint, it was specific to US LEC  
9 and the wording of that agreement.  
10 (DEPOSITION EXHIBIT NO. 21 WAS MARKED.)  
11 Q I'm handing you a document labeled Exhibit  
12 9. Did I say 9? 21. Exhibit 21.  
13 A No, don't go back to 9.  
14 Q Do you recognize this document?  
15 A Yes. I believe it was the order issued by  
16 the North Carolina Commission regarding a  
17 preliminary injunction and scheduling a  
18 hearing to discuss the US LEC complaint.  
19 Q And is this the US LEC complaint that you  
20 discuss on page 75 of your testimony?  
21 A Yes.  
22 Q Do you see the page that I've marked for  
23 you with the green flag?  
24 A Yes.  
25 Q I direct your attention to the first full

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1 paragraph. The order states that US LEC's  
2 business customers are being harmed when  
3 their names are not delivered to BellSouth  
4 Caller ID subscribers that they call in  
5 the course of their business.  
6 A Yes, I see that.  
7 Q Is this finding relevant to Issue 3-4 --  
8 excuse me, Issue 2-39 in this arbitration?  
9 A No, I don't think it is. I think this was  
10 an interpretation of the US LEC agreement  
11 and the terms that were set forth in there  
12 regarding continuing to provide features,  
13 functions, and capabilities associated  
14 with services they were providing at the  
15 time we entered into that contract. We  
16 subsequently decided that we were not  
17 going to continue querying certain  
18 databases, and that impacted that  
19 impacted BellSouth's customers in the same  
20 regard as it impacted US LEC's customers,  
21 period.  
22 Q But this sentence on page 9 of the order  
23 does this regard the terms of the  
24 agreement between US LEC and BellSouth?  
25 A It was --

81 (Pages 469 to 472)



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1 MR MEZA Object to the form  
2 A Can you ask that again? I'm sorry  
3 Q Does this sentence on page 9 in the order  
4 regard US LEC's -- the terms or  
5 conditions of US LEC's agreement with  
6 BellSouth?  
7 A Yes The whole basis of this complaint  
8 was in regards to the agreement between US  
9 LEC and BellSouth  
10 Q Is the Commission's finding that business  
11 customers are being harmed not relevant to  
12 the order that is issued -- or that was  
13 issued in this case?  
14 MR MEZA Object to the form  
15 A I think this order pertains to the US  
16 LEC/BellSouth agreement In our opinion,  
17 the language we're proposing in this  
18 agreement is consistent with our  
19 requirements and is appropriate for  
20 inclusion in the agreement  
21 Q Is it BellSouth's position that its  
22 proposed language regarding CNAM queries  
23 comports in any way with this North  
24 Carolina Commission order?  
25 MR MEZA Object to the form

1 A That would be -- The term ICO, which  
2 we -- stands for -- used to stand for  
3 independent company -- independent  
4 telephone company  
5 Q Do ICOs originate transit traffic  
6 sometimes?  
7 A They can sometimes, yes  
8 Q Does BellSouth enter into agreements with  
9 ICOs with regard to transit traffic?  
10 A I believe we do I'm not that familiar  
11 with the ICO agreements There are  
12 different vintages based on the Act and  
13 how it impacts arrangements between ILECs  
14 and ICOs I'm not that familiar with that  
15 whole process  
16 Q At page 76 of your testimony from November  
17 12th --  
18 A Yes  
19 Q -- you say at lines 15 to 17 that both  
20 BellSouth and the Petitioners appear to  
21 agree that the CLPs should reimburse  
22 BellSouth for third-party charges when  
23 such charges are covered by the agreement  
24 between BellSouth and the terminating  
25 carrier Do you see that?

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1 A I don't know that this North Carolina  
2 order has any bearing on the language that  
3 we're proposing there This was isolated  
4 to the agreement as it existed between US  
5 LEC and BellSouth  
6 Q What do you mean "isolated to the  
7 agreement"?  
8 A Well, it pertains to that agreement It's  
9 a complaint of the agreement between US  
10 LEC regarding the language that's in the  
11 US LEC/BellSouth agreement  
12 Q This order does not pertain to any other  
13 agreement?  
14 A It's not my understanding of this order  
15 MR MEZA Off the record  
16 (RECESS )  
17 BY MS JOYCE  
18 Q Ms Blake, can you tell me, what is  
19 transit traffic?  
20 A Transit traffic is traffic that BellSouth  
21 does not originate or terminate on its  
22 network It originates from one party  
23 goes over BellSouth's network and  
24 terminates in another party  
25 Q And what is an ICO?

1 A Yes  
2 Q Could a terminating carrier be an ICO?  
3 A Yes  
4 Q And I believe it's your testimony you  
5 don't know if BellSouth has agreements  
6 with every ICO?  
7 A Yes I don't know that or what those  
8 arrangements are  
9 Q Do you know approximately the percentage  
10 of ICOs with which BellSouth has  
11 agreements?  
12 A Well I'm sure we have some arrangements  
13 with almost -- when we interconnect with  
14 ICOs and how that interconnection is  
15 effectuated or under what terms that's  
16 provided to -- between the parties. I  
17 don't know -- I mean so that our end user  
18 can call their end users and their end  
19 users can call our end users But as far  
20 as in regards to transit traffic and all  
21 the different agreements and  
22 relationships, stipulations, memorandums  
23 and understanding, et cetera I'm not  
24 familiar with all of them that are out  
25 there

82 (Pages 473 to 476)

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1 Q At page 77 of this testimony. lines 2 to  
2 3 --  
3 A Uh-huh  
4 Q -- you state that the CLPs should  
5 reimburse BellSouth for all charges paid  
6 by BellSouth. Do you see that?  
7 A Yes. It's a subset of the whole sentence  
8 that's discussing. in the event that  
9 BellSouth is imposed charges for the CLPs'  
10 traffic that we terminate/transit on  
11 their behalf  
12 Q In what circumstances would BellSouth  
13 be -- have that charge imposed on it for  
14 the CLPs' traffic?  
15 A If the CLP sends us the traffic. it  
16 transits our network. we deliver it to the  
17 ICO. and the arrangement with the ICO is  
18 for them to charge us for all the traffic  
19 that we terminate to them. that would  
20 include any CLP traffic that is sent to  
21 us  
22 Q Could a traffic that originates with a  
23 CLP. passes through the BellSouth network  
24 terminate to an entity that is not an ICO?  
25 A Yeah. It could be another CLP. sure

1 A I can't speak for the accuracy of  
2 everything the ICOs bill us. I mean. I'd  
3 say we take the same pains for anything we  
4 get charged. We substantiate the charges  
5 and pay appropriately. and whether that's  
6 representative of traffic we transitted  
7 for the CLPs or our own traffic. the same  
8 due diligence  
9 Q What do you mean by "due diligence"?  
10 A The same investigation. checking if it's a  
11 valid charge. is it -- you know. is it  
12 accurate. did they bill us the right --  
13 for the right messages. et cetera  
14 Whatever it takes to substantiate the  
15 billing before we pay it  
16 Q How long does it take to substantiate the  
17 billing typically?  
18 A I don't know the process relative to how  
19 we exchange or pay those bills with the  
20 ICO. handle the settlements with them  
21 Q Is BellSouth required to pay the ICO  
22 within a specified period of time?  
23 A I'm not familiar with what the  
24 arrangements are. the agreements are  
25 relative to that relationship between

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1 Q Why should the CLP reimburse BellSouth for  
2 all charges paid by BellSouth?  
3 A It would be all charges paid by BellSouth  
4 for transiting the traffic. for  
5 terminating that traffic -- handing their  
6 traffic off to the terminating carrier  
7 because they're using our facilities and  
8 we're performing a function  
9 Q If BellSouth had paid charges that it was  
10 not required to pay. should a CLP  
11 reimburse them?  
12 MR MEZA. Object to the form of  
13 the question  
14 A When you say not required to pay. if the  
15 ICO submits us a bill -- submits a bill  
16 to BellSouth and then expects to be paid.  
17 based on whatever arrangement we have with  
18 that ICO to pay those charges. we feel the  
19 CLP should reimburse us for that  
20 traffic -- their portion of the traffic  
21 that we transited or handed off to the ICO  
22 on behalf of the CLP  
23 Q Is it BellSouth's position that the  
24 charges imposed by the ICO are always  
25 accurate?

1 BellSouth and the ICOs  
2 Q Does BellSouth have a position on how soon  
3 the CLPs should reimburse BellSouth for  
4 all charges paid by BellSouth in the  
5 context of transit traffic?  
6 A I mean. it would be governed by whatever  
7 the payment due date requirements are set  
8 forth in the agreement for services  
9 provided. which is an issue in dispute  
10 between the parties  
11 Q Does the substantiation of bills that  
12 BellSouth receives take varying periods of  
13 time to resolve?  
14 A I don't know the nuances of how those  
15 bills are substantiated. settled. paid. I  
16 just don't know that detail  
17 Q Is it BellSouth's position that the CLPs  
18 should reimburse them -- strike that  
19 Has BellSouth ever paid a bill  
20 submitted by an ICO prior to  
21 substantiating it?  
22 A I don't know that -- again. it goes back  
23 to not knowing the details of how we  
24 validate the bills. but however we do that  
25 validation. it would encompass whatever

83 (Pages 477 to 480)

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1 messages we're transiting on behalf of  
2 the CLECs along with their own messages  
3 Q Does anybody at BellSouth have an  
4 understanding as to how long it takes to  
5 substantiate an ICO bill?  
6 A I would assume there's people within  
7 BellSouth that have that knowledge I'm  
8 not sure exactly There's organizations  
9 that interface with the ICOs and handle  
10 that settlement process I'm not familiar  
11 with any specific names of anybody that  
12 handles that  
13 Q Did you consult with anybody that deals  
14 with ICOs when you wrote this testimony  
15 for Issue 3-4?  
16 A Yes I did  
17 Q And did you ask them about how they  
18 substantiate ICO bills?  
19 A Yes I asked generally, you know do we  
20 handle -- you know, treat basically the  
21 charges that we're paying or being charged  
22 on behalf of the ICO -- or, excuse me, the  
23 CLPs We, again, do the same due  
24 diligence we do for our messages  
25 Q At page 78 of your testimony from November

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1 12th, you begin a section of testimony  
2 Line 24 to 25 reads that, although  
3 BellSouth clearly has an obligation to  
4 interconnect with other carriers under  
5 Section 251(C)(2) of the 1996 Act, it is  
6 BellSouth's position that ILECs do not  
7 have a duty to provide transit services  
8 for other carriers  
9 A Correct  
10 Q Why did you include that statement in this  
11 testimony?  
12 A Well I think that's the foundation of  
13 this whole issue is -- I mean we're  
14 willing to perform the transit function  
15 We want to be reimbursed for the function  
16 we're performing The CLECs have the same  
17 ability to interconnect directly or they  
18 can go indirectly through BellSouth but  
19 again we should be reimbursed for  
20 performing that function There's nothing  
21 in here or in -- our understanding and  
22 position is that they can do this  
23 themselves We don't have to transit this  
24 traffic We can interconnect directly  
25 with the ICOs or if you choose to

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1 indirectly interconnect, which would mean  
2 using BellSouth we're saying we should be  
3 paid for that function  
4 Q Has BellSouth already agreed with  
5 Petitioners that they will do the transit  
6 traffic?  
7 MR MEZA Object to form  
8 A I mean the language that's in here is  
9 setting forth how we would handle transit  
10 traffic and under what terms and  
11 conditions we would handle it, and we're  
12 trying to put into place the ability for  
13 us to be reimbursed for performing that  
14 function  
15 Q On page 78 of your testimony, beginning at  
16 line 5  
17 A 78, uh-huh  
18 Q To states that, BellSouth is unwilling to  
19 provide a transit function if the  
20 financial obligation to compensate rests  
21 with BellSouth and not the originating  
22 carrier which in this case would be the  
23 Joint Petitioners Do you see that?  
24 A Yes  
25 Q Is it BellSouth's position that the Joint

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1 Petitioners intend that the obligation to  
2 compensate rests with BellSouth?  
3 A Well, it appears that way in the context  
4 of the Joint Petitioners' language and  
5 only -- they're only willing to reimburse  
6 us if we have a contractual obligation to  
7 deliver -- to deliver the traffic to the  
8 ICO -- contractual or have been ordered by  
9 the Commission, is my reading of their  
10 language  
11 Q Is it BellSouth's position that the Joint  
12 Petitioners are not willing to pay when  
13 BellSouth carries transit traffic to an  
14 ICO?  
15 A My understanding of the Joint Petitioners'  
16 position is that you're only willing to  
17 pay BellSouth if we have a contractual  
18 obligation directly with that ICO to pay  
19 for the traffic we deliver to them or we  
20 have an order requiring us to deliver that  
21 traffic and pay the ICO  
22 Q If BellSouth did not have an agreement  
23 with an ICO, would it pay for their  
24 terminating transit traffic?  
25 MR MEZA Object to the form

84 (Pages 481 to 484)

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1 A If BellSouth did not have an agreement  
2 with the ICO, would we pay the ICO for the  
3 traffic we terminate to them? Is that --  
4 I'm not sure I followed the flow of the  
5 traffic on the --

6 Q Right If BellSouth did not have an  
7 agreement with an ICO and it took traffic  
8 from a CLP through the BellSouth network,  
9 terminated it at the ICO, would BellSouth  
10 pay the ICO if presented with a bill?

11 A I guess by virtue of the term agreement  
12 with the ICO, there are -- my  
13 understanding is there's implied  
14 agreement. You know, if we don't deliver  
15 the traffic to the ICO, it would get  
16 blocked. So the traffic needs to  
17 terminate to the ICO, and the ICO, most  
18 likely, will seek reimbursement for  
19 terminating that traffic. Whether there's  
20 an explicit agreement on that or it's a  
21 settlement agreement or it's an implied  
22 agreement that they think they're entitled  
23 to charge us access charges or whatever  
24 the rates they'll charge us, they're going  
25 to send us a bill.

1 ICO that requires us that for all the  
2 traffic we terminate to that ICO, the ICO  
3 is seeking reimbursement, they're going to  
4 look to BellSouth for that reimbursement.

5 A way to get BellSouth out of the  
6 middle is for the CLPs to directly  
7 interconnect with the ICOs and not use  
8 BellSouth to transit. In those cases  
9 where they fail to do that or refuse to do  
10 that and we're still getting the traffic  
11 from the CLP, we need to have some  
12 protection that we're going to get  
13 reimbursement from the CLP so that we have  
14 the money to pay the ICO.

15 Q Would you pay the ICO after getting the  
16 money from the CLP?

17 A I don't know how all the billing and the  
18 settlements and the cycling of money  
19 coming in, money going out -- I mean  
20 again, we get your money when you pay your  
21 bill based on the payment due date  
22 whatever we agreed to, and how that money  
23 comes in -- I mean, we would pay the ICO  
24 and seek reimbursement according to the  
25 agreement. I mean, we pay the ICO.

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1 Q Would BellSouth pay it?

2 A Yes. I mean, again, barring some other  
3 thing that we would think precludes us, we  
4 don't have to pay it, but I'm not aware of  
5 anything, unless it's contrary to another  
6 agreement. But I guess a lot of it would  
7 be dictated by what the agreement is or a  
8 stipulation or settlement or however that  
9 arrangement is set up.

10 Q On page 77 of your November 12th  
11 testimony, lines 17 to 20, you state that  
12 BellSouth must ensure that its new  
13 contracts protect it against being drawn  
14 into the middle of a dispute between the  
15 ICOs and any carrier sending traffic to  
16 the ICOs' end users over BellSouth's  
17 network.

18 A Yes.

19 Q Do you see that?

20 A Yes.

21 Q What do you mean by the clause being drawn  
22 into the middle of a dispute?

23 A It's kind of referenced up above that in  
24 the scenario that's being set forth. You  
25 know, if we've got an agreement with the

1 according to the terms of how we've got to  
2 pay the ICO. We bill you for the charges  
3 we have been billed from the ICO and get  
4 your payment according to the terms for  
5 set forth in the agreement for paying the  
6 bill.

7 Q But could it ever happen that BellSouth  
8 sought money from the CLP prior to paying  
9 the ICO?

10 A It's possible. I mean, depending on the  
11 cycles and how the bills are sent out and  
12 how the payments are distributed. I don't  
13 know. I mean, I can't say that it would  
14 never happen. It could. But I really  
15 don't know. Like I said, the cycle of the  
16 ins and the outs of when we bill you, when  
17 we pay the ICO.

18 Q If you presented a bill to the CLP and  
19 asked them to provide money because we  
20 have this bill from an ICO --

21 A Uh-huh. Uh-huh.

22 Q -- and the CLP says, for some reason, I  
23 don't want to pay you, BellSouth, who are  
24 the parties in dispute?

25 MR. MEZA: Object to the form.

85 (Pages 485 to 488)

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1 A This one is kind of confusing But I  
2 mean. if we sent you a bill and you  
3 disputed that bill it would basically  
4 fall into this bill dispute resolution  
5 Again. our effort is to get us out  
6 of the middle of that by you having a  
7 direct interconnection with the ICOs  
8 Q Is that the case with this agreement. that  
9 BellSouth is no longer carrying traffic  
10 for the CLPs to the ICOs?  
11 A No I mean we worked it in here but  
12 we want the assurance that we're going to  
13 be financially compensated for performing  
14 that function and not have the CLP --  
15 the Joint Petitioners refuse to pay for  
16 the traffic we transit for them  
17 Q And BellSouth intends to under this  
18 agreement. carry the transit traffic for  
19 the length of the agreement. absent  
20 amendment?  
21 A Yeah. absent amendment and absent a direct  
22 agreement between the CLP and the ICO If  
23 you don't send us the traffic. of course  
24 we won't bill you for the traffic you  
25 don't send us You have a direct

1 sorry  
2 Q Is it BellSouth's position that the  
3 Petitioners intend never to pay BellSouth  
4 when BellSouth pays an ICO for terminating  
5 the transit traffic?  
6 A No It's my understanding the Joint  
7 Petitioners' position is that they feel  
8 they only pay BellSouth for transitting  
9 that traffic if we have a contractual  
10 obligation or have been ordered by a state  
11 commission to pay the ICOs  
12 Q Do you think it's reasonable for a company  
13 to review a bill before the company pays  
14 it?  
15 A Certainly  
16 Q What is a tandem intermediary charge?  
17 A Tandem intermediary charge is a charge  
18 that we have proposed for the transitting  
19 function -- performing the transitting  
20 function  
21 Q And is that now sometimes abbreviated  
22 T-I-C or TIC?  
23 A Yes  
24 Q If I call it a TIC will you know what I  
25 mean?

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1 relationship -- agreement with the ICO to  
2 send the traffic directly to them and not  
3 come through BellSouth of course then  
4 this is kind of a moot point. we wouldn't  
5 be transitting your traffic  
6 Q Has a CLP ever sent a bill for services  
7 rendered to BellSouth that BellSouth did  
8 not think was accurate?  
9 MR MEZA Object to the form  
10 A I have no involvement in any of the  
11 billing that we would -- would. could get  
12 from of a CLP for services they provide to  
13 us  
14 Q If a CLP sent BellSouth a bill for  
15 services that were not included in an  
16 agreement between the CLP and BellSouth.  
17 would BellSouth pay that bill?  
18 MR MEZA Object to the form  
19 A I don't know A lot of it would be  
20 dependent on the circumstances and what  
21 the situation was  
22 Q Is it BellSouth's position that  
23 Petitioners intend never to reimburse  
24 BellSouth for paying an ICO?  
25 A Can you say that first part again? I'm

1 A Yes I will  
2 Q When would a charge -- a tandem -- TIC  
3 be charged to Petitioners?  
4 A It would be charged for BellSouth  
5 performing the transit function when we  
6 deliver traffic to the ICO on their  
7 behalf  
8 Q Do you know how the charge is derived?  
9 A Not in any great detail It is my  
10 understanding it's a composite charge that  
11 would be all-encompassing of the tandem --  
12 I mean the TIC and I believe that's what  
13 we've proposed  
14 Q At page 82 of your November 12  
15 testimony --  
16 A Yes  
17 Q -- you list several costs beginning at  
18 line 18 It states that BellSouth incurs  
19 costs far beyond those for which the  
20 Commission-ordered TELRIC rates were  
21 designed to address. such as the cost of  
22 sending records to the CLPs identifying  
23 the originating carrier. costs of ensuring  
24 that BellSouth is not being billed for its  
25 third-party's transit traffic. and the

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1 costs that BellSouth has incurred and  
2 continues to incur due to the disputes  
3 arising from the failure on the part of  
4 the CLPs to enter into traffic exchange  
5 arrangements with terminating carriers  
6 Do you see that?  
7 A Yes  
8 Q How did you create this list?  
9 A I had discussions with folks at BellSouth  
10 that were involved in negotiating this  
11 issue with the Joint Petitioners and then  
12 getting an understanding of what the TIC  
13 is  
14 Q And is it your position that the costs  
15 that are listed on this page are not  
16 included in TELRIC rates?  
17 A Yes I mean that's what that paragraph  
18 you just read said  
19 Q How do you know they're not included in  
20 TELRIC rates?  
21 A Because the functions that these costs are  
22 associated for are not associated with an  
23 element that was established at a TELRIC  
24 rate There wasn't an element discussed  
25 or that encompasses these costs

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1 Q So no state commission in the BellSouth  
2 region has included these costs in TELRIC  
3 rates?  
4 A That's my understanding yes  
5 Q At lines 6 to 8 of page 82 of your  
6 testimony you state that BellSouth agrees  
7 to include this function in its agreement  
8 that facts should not be used to penalize  
9 BellSouth and impose rates for a service  
10 that pursuant to a separate agreement  
11 the Commission would not even be privy to  
12 A Yes  
13 Q In that statement which Commission are  
14 you referring?  
15 A It would be the North Carolina Utilities  
16 Commission  
17 Q Would that statement apply to any of the  
18 state commissions in the BellSouth  
19 region?  
20 A Yes  
21 Q What do you mean when you say that the  
22 Commission would not even be privy to?  
23 A The agreement would be -- Since we don't  
24 have an obligation to provide the  
25 function the agreement we would be

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1 entering into would be the terms we used  
2 before commercial agreement that is  
3 outside the scope of an arbitration  
4 proceeding or an obligation pursuant to  
5 251. 252 It would be a commercial  
6 agreement that we would not be obligated  
7 to file with the Commission  
8 Q The Commission would not review the rate?  
9 A Correct  
10 Q Would the Commission know what the rate  
11 is?  
12 A I would not imagine if we didn't file it  
13 with them  
14 Q And what did you mean that that fact  
15 should not be used to penalize BellSouth?  
16 A I think in the context of the whole  
17 transit function, transit handling  
18 transit traffic without having an  
19 obligation, it is tied up in this  
20 arbitration as language in this  
21 interconnection agreement Again, which  
22 is inherently a 251, 252 obligation By  
23 virtue of the fact that we've had language  
24 in the agreements and are willing to  
25 perform the function although not an

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1 obligated function, it shouldn't be held  
2 against us that we can't -- that we  
3 always have to charge TELRIC just because  
4 it's in this agreement We should have  
5 the ability to treat that function as if  
6 it's a commercial agreement within the  
7 interconnection agreement  
8 Q So charging TELRIC penalizes BellSouth in  
9 this instance?  
10 A Well penalizes in the context that --  
11 attempting to assume that we have an  
12 obligation to provide it  
13 Q In your rebuttal testimony which is  
14 Exhibit 3 here November 19th  
15 A What page?  
16 Q Page 47 You state that CLECs that elect  
17 to have BellSouth perform this function --  
18 and by "this function" you're referring to  
19 passing transit traffic?  
20 A Yes  
21 Q Should negotiate their rates terms, and  
22 conditions of transit traffic in a  
23 separate agreement Do you see that?  
24 A Yes  
25 Q What do you mean by "separate agreement"?

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1 A A commercial agreement outside the  
2 obligations of 251 Commercial agreement  
3 Q Is the TIC charge part of the  
4 interconnection agreement being arbitrated  
5 in this case?  
6 A The transit traffic function is included  
7 as an issue in this case I'll bet we --  
8 again, back to the whole we shouldn't be  
9 penalized because we've included it in  
10 here as a function we're willing to offer,  
11 and we don't believe it's appropriate to  
12 be offered at TELRIC rates  
13 Q Should the rates be in the interconnection  
14 agreement?  
15 A In my opinion, no  
16 Q Because?  
17 A They could be pulled out and put in a  
18 separate agreement  
19 Q Why is that the case?  
20 A It's not an obligation we have pursuant to  
21 251 and get to this juncture with an  
22 arbitration, to get thrown in there as an  
23 obligation, which it's not by virtue of  
24 being included in the arbitration as an  
25 unresolved issue I mean, I think this

1 may be encompassed in the final rules.  
2 maybe Probably not  
3 Q So when would the parties, the Petitioners  
4 and BellSouth negotiate the TIC rate?  
5 A Well, I guess the Petitioners could  
6 contact the BellSouth negotiator and  
7 negotiate the TIC rates I'm not sure of  
8 your question  
9 Q Would that occur in the context of this  
10 arbitration at all?  
11 A I mean it has occurred in the context of  
12 the negotiations up to this point It was  
13 teed up as an issue in the arbitration  
14 primarily because it was included in the  
15 agreement as a function we'll perform  
16 Q So as it stands now, status quo of this  
17 arbitration and this agreement --  
18 A Uh-huh  
19 Q -- the TIC function, the transit traffic  
20 function is in the agreement right now?  
21 A Yes The provision for BellSouth to  
22 provide the transit traffic function is  
23 set forth in attachment 3 And the  
24 conditions around which we would provide  
25 that function and the rates associated

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1 whole thing could be solved if we took it  
2 out of the agreement and put it in a  
3 separate agreement  
4 Q Can you think of an instance in which a  
5 state commission issued a ruling on  
6 something that it didn't have jurisdiction  
7 over?  
8 A Can you say that first part again? I'm  
9 sorry  
10 Q Can you think of an instance in which a  
11 state commission issued a ruling over an  
12 issue it didn't have jurisdiction on?  
13 A Yeah, I can think of one  
14 Q What was that?  
15 A Market-based rates for enterprise  
16 switching Not an obligation of 251 We  
17 had some agreements in a previous  
18 arbitration where they ruled we had to  
19 provide that at non-market-based rates  
20 Q And did BellSouth appeal that decision?  
21 A I believe we have We've actually  
22 probably filed a preemption request to the  
23 FCC as well  
24 Q Has that been resolved?  
25 A Not to my knowledge I think actually it

1 with it are also proposed in that  
2 attachment 3, in other words BellSouth's  
3 position because we don't have an  
4 obligation to do that pursuant to 251,  
5 it's not really an issue appropriate for  
6 arbitration, and we will -- again, are  
7 willing to provide that function but we  
8 forget we should -- back to the statement  
9 shouldn't be penalized by including it in  
10 this agreement Now it's being swept up  
11 with all the other 251 obligations and  
12 trying to be pigeonholed with the  
13 requirements provided with TELRIC  
14 Q Does this interconnection agreement  
15 contemplate that Petitioners will receive  
16 any element or service not at a TELRIC  
17 rate?  
18 (INTERRUPTION )  
19 A Can you ask that again? I'm sorry Does  
20 this agreement --  
21 Q Does this agreement contemplate that  
22 Petitioners will obtain an element or  
23 service at a non-TELRIC rates?  
24 A There are some provisions in there that  
25 I'm aware of that are not at TELRIC rate.

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1 yeah  
2 Q Why is it advantageous or desirable for  
3 the function of transiting traffic to be  
4 in the interconnection agreement and the  
5 rate to be in a separate agreement?  
6 A Well maybe you misunderstood me I  
7 wasn't proposing just the rate be in a  
8 separate agreement I would propose to  
9 resolve this issue the entire transit  
10 function. TIC. the whole thing could be in  
11 a separate agreement  
12 Q But you testified that BellSouth has  
13 already agreed to put transit traffic in  
14 this agreement?  
15 MR MEZA Object to the form of  
16 the question  
17 A Yes I mean. we've got it included in  
18 here. albeit we still say it's not an  
19 obligation We're willing to provide the  
20 function. but the function and the price  
21 should not be dictated by 251 obligations  
22 for which it's not  
23 Q And have the parties in this case  
24 successfully negotiated a TIC rate thus  
25 far?

1 MS JOYCE Thank you very much  
2 for your time Have a good evening  
3 THE WITNESS Thank you  
4 (THE DEPOSITION CONCLUDED AT 5 49 P M )  
5  
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1 A I don't believe so I think we've made a  
2 proposal of one. and I'm not sure of how  
3 it was ultimately received or ended up  
4 MS JOYCE Ms Blake. I believe  
5 we're concluded for the day I don't know  
6 if your counsel has any questions  
7 MR MEZA I have no questions  
8 thank you  
9 MS JOYCE Ms Blake you'll  
10 receive a copy of this transcript. and  
11 you'll have the right to read it and make  
12 any changes to your testimony in any  
13 areas  
14 THE WITNESS Do I have to? Yeah  
15 MS JOYCE And you'll have 30  
16 calendar days from the receipt of the  
17 transcript to sign it Do you understand  
18 that?  
19 THE WITNESS Yes. I do  
20 MS JOYCE And do you understand  
21 that if you do not sign the transcript. it  
22 will. nonetheless be deemed an official  
23 transcript and used at a hearing?  
24 THE WITNESS Yes I understand  
25 that

1 ERRATA SHEET  
2  
3 Case name In the Matter of  
4  
5 Joint Petition NewSouth  
6 Communications for  
7 Arbitration with BellSouth  
8  
9 Deponent Kathy Blake Volume II  
10  
11 Date  
12  
13 PAGE LINE READS SHOULD READ  
14 / / /  
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25 / / /

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NICOLE FLEMING & ASSOCIATES  
(919) 567-1123



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SIGNATURE

I Kathy Blake, do hereby state under oath  
that I have read the above and foregoing  
deposition in its entirety and that the  
same is a full, true and correct  
transcript of my testimony.  
Signature is subject to corrections on  
attached errata sheet, if any.

Kathy Blake

State of

County of

Sworn to and subscribed before me this  
day of 20

Notary Public

My commission expires

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CERTIFICATE

State of North Carolina  
County of Harnett

I Nicole Ball Fleming, a notary public in  
and for the State of North Carolina, do  
hereby certify that there came before me  
on the 8th day of December, 2004, the  
person hereinbefore named, who was by me  
duly sworn to testify to the truth and  
nothing but the truth of his knowledge,  
concerning the matters in controversy in  
this cause, that the witness was thereupon  
examined under oath, the examination  
reduced to typewriting by myself, and the  
deposition is a true and accurate  
transcription of the testimony given by  
the witness.

I further certify that I am not counsel  
for, nor in the employment of any of the  
parties to this action, that I am not  
related by blood or marriage to any of the  
parties, nor am I interested, either  
directly or indirectly, in the results of  
this action.

In witness whereof, I have hereto set my  
hand and affixed my official notarial  
seal, this the 24th day of December,  
2004.

Nicole Ball Fleming  
Notary Public  
My commission expires 1/30/05

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NICOLE FLEMING & ASSOCIATES  
(919) 567-1123